

The Indian Law Reports

APPELLATE CIVIL

Before Mehar Singh, C.J. and R. S. Sarkaria, J.

LAKSHBIR,—Appellant.

versus

ANANT RAM AND OTHERS,—Respondents.

Letters Patent Appeal No. 114 of 1964

March 7, 1969.

Punjab Tenancy Act (XVI of 1887)—Sections 42, 43 and 45—Pepsu Tenancy and Agricultural Lands Act (Pepsu Act VIII of 1953)—Section 7—Landlord serving notices for ejection on tenants under section 42, 43 and 45, Punjab Tenancy Act, 1887—Notices not mentioning any ground for ejection—Tenants not filing suit to contest such notices of ejection within two months of the service thereof as required under section 45—Before the expiry of such two months, Pepsu Tenancy and Agricultural Lands Acts, 1953 coming into force—Order of ejection passed on the basis of the notices—such order—Whether contrary to law—Dispossession of the tenants in consequence thereof—Whether wrongful—Wrongful dispossession of a tenant—Whether derogatory to the status of the tenant—Procedure for ejection of tenants after the enforcement of the Act—Stated.

Pepsu Tenancy and Agricultural Lands Act (Pepsu Act VIII of 1953)—Sections 20 and 22—Tenant wrongfully dispossessed—Whether has the right to apply for purchase of the land under his tenancy.

Held, that before coming into force of Pepsu Tenancy and Agricultural Lands Act, 1953, it was not necessary for the landlord to give reasons for ejection of a tenant. Notices for ejection could be issued to the tenants under sections 42, 43 and 45 of the Punjab Tenancy Act, 1887, without specifying any reason for ejection. The tenants had the right to file a suit within two months of the service of the notices to contest the notices. If nothing else happened and the tenants did not institute the suit within the said period of two months, the tenants would be liable to ejection on an application to the revenue officer concerned according to provisions of section 45 of Punjab Tenancy Act. However, with the coming into force of the Pepsu Tenancy and Agricultural Lands Act, the termination of any tenancy except in accordance with its provisions or except on the grounds stated in section 7 of the Act, is prohibited. Section 4 of the Act provides that the provisions of the Act are to override all other laws, statutory or otherwise which are inconsistent with the provisions of the Act. If the

notices under sections 42, 43 and 45 of the Punjab Tenancy Act, 1887, without specifying the reasons for ejection are served and before the expiry of the two months of the service, Pepsu Tenancy and Agricultural Lands Act, 1953, comes into force, the landlord can only claim ejection of the tenant on the grounds in section 7 of the Act. Because no reason for ejection as envisaged by section 7 are given in the notices, they become useless and infructuous for the purpose of obtaining ejection. Any order of ejection passed on the basis of such notices is, therefore, contrary to law and dis-possession of the tenant in consequence of that order is wrongful

(Para 18)

Held, 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 the tenant. The legal relationship of landlord and tenant continues notwithstanding the dispossession. The dispossession, contrary to law and wrongful, does not derogate from their status as tenants of the land.

(Para 18)

Held, that Pepsu Tenancy and Agricultural Lands Act, 1953, does not deal with the manner and method or the procedure of ejection of tenants but only deals with the grounds of ejection. The procedure of ejection continues to be the same as provided in the Punjab Tenancy Act of 1887 that is either by way of a suit before a revenue Court or by way of summary proceedings in the shape of a notice for ejection of the tenant having regard to sections 42(b), 43 and 45 of that Act. In the notices for ejection the grounds of ejection available to the landlord under section 7 of Pepsu Tenancy and Agricultural Lands Act may be given or in the alternative when an application under sub-section (5) of section 45 of the Punjab Tenancy Act for ejection of the tenants is made, the grounds of ejection as provided in section 7 of the Pepsu Tenancy Act should be given.

Held, that a tenant who is wrongfully dispossessed from his tenancy continues to be a 'tenant' within the definition of section 20 of Pepsu Tenancy and Agricultural Lands Act, 1955. If other requisites of the law are fulfilled, such a tenant has the right to purchase the land under his tenancy under section 22 of the Act. When wrongful or unlawful dispossession of a tenant does not disturb his tenancy, it means only that for this purpose the tenant is accepted by law to have continued in possession of the land.

(Para 18)

Letters Patent Appeal under Clause 10 of the Letters Patent against the order of the Hon'ble Mr. Justice Harbans Singh, passed in Civil Writ No. 1568 of 1962 dated 6th February, 1964.

ATMA RAM, CHIRANJI LAL, NISHAT SINGH AND SURAJ PARKASH GUPTA,
for the Appellant.

D. N. AGGARWAL AND MALUK SINGH, ADVOCATES, for the Respondents.

ORDER.

MEHAR SINGH C. J.—This is an appeal under clause 10 of the Letters Patent from the judgment and order, dated February 6, 1964, of a learned Single Judge, reported as *Lakshbir Singh v. Anant Ram* (1) dismissing a petition under Articles 226 and 227 of the Constitution by the appellant, Lakshbir Singh, leaving the parties to bear their own costs.

(2) The facts of the case are somewhat complicated and not all are available from the annexure filed by the parties with the original petition. The learned Single Judge had to call for the files of the revenue authorities for clarification of the facts and we had also the facility of looking into the same. Reference to annexure will be to those with the original petition, and reference to the Exhibits will be to those on File No. 87 of the Naib-Tehsildar Agrarian. It is, therefore, necessary to give some considerable details of the facts so that the matters in controversy become clear.

(3) In the revenue area of Bhatinda there are two Pattis, namely, Patti Jhutti and Patti Mahna. The land, subject of controversy in this appeal, is of four survey numbers, three in Patti Jhutti, that is to say, survey Nos. 5029/1824, 7 Bighas and 9 Biswas, 5031/1825, 6 Bighas and 3 Biswas, and 1826, 22 Bighas and 10 Biswas, and the fourth survey No. 5209/1799, 11 Bighas and 14 Biswas, in Patti Mahna. The area of the four field numbers comes to 9 standard acres and $15\frac{1}{4}$ standard units. This land was the property of Sampuran Singh and others of Bhatinda from whom Thakur Das Madhok purchased it. With File No. 87 is Khasra Girdawari, Exhibit P/2, from Kharif 1994 BK. to Rabi 1998 BK. (Kharif 1937 to Rabi 1941), which shows that in 1937 the three survey numbers of Patti Jhutti were in the self-cultivation of Thakar Das Madhok, but in Kharif 1938 Hari Ram is shown as tenant-at-will of all the four survey numbers of both the Pattis, obviously under the then owner Thakur Das Madhok. This state of affairs continued up to Rabi 1941. Exhibit P/3 in the same file is Khasra Girdawari from Kharif 1998 BK. to Rabi 2002 BK. (Kharif 1941 to Rabi 1945). It shows that the land was in the tenancy of Hari Ram down to Rabi 2000 BK. (Rabi 1943), and as in Kharif 2000 BK. (Kharif 1943), the name of his son, Sant Ram, respondent, appears as cultivator of the land on account of inheritance, it shows that Hari Ram died somewhere about that time. The possession from Kharif 1943 to Rabi 1945 is of Sant Ram, respondent, alone as tenant-at-will

(1) 1964 P.L.R. 610.

of the land. Thakur Das Madhok died on August 10, 1944 (Annexure 'A'). He was succeeded by his grandson Jahangir Chand Madhok, whose name appears in the Khasra Girdawari of Kharif 2001 BK. (Kharif 1944) onwards. The Khasra Girdawaris, Exhibits P/4, 5 and 6, with File No. 87, from Kharif 2002 BK. (Kharif 1945) to Rabi 2011 BK. (Rabi 1954) show that Sant Ram, respondent, continued as the tenant-at-will of all the four survey numbers. There is some inconsistency with regard to the amount of the Chakota or the cash rent in the Khasra Girdawaris, Exhibits P-5 and 6, but that is not at all a material matter so far as the present case is concerned. On March 2, 1953, Jahangir Chand Madhok mortgaged, with possession, the four survey numbers with Banarsi Das and others according to the mortgage deed Annexure 'B'. The total area was mortgaged. Sant Ram, respondent, according to the Khasra Girdawaris, Exhibits P/5 and 6, continues as the tenant-at-will under the mortgagees. The only matter that may be stated here with regard to this mortgage is that in the deed itself there was no mention that the land was under the tenancy of any tenant, though the fact of the matter, according to the entries in the Khasra Girdawaris, was that the four survey numbers were in the possession of Sant Ram, respondent, as tenant-at-will, first under the owner Jahangir Chand Madhok, and from March 2, 1953, under the mortgagees, Banarsi Das and others.

(4) Although the details of this matter will appear a little later, it is pertinent to state here that Anant Ram, respondent, claimed to have also become tenant of the four field numbers under Jahangir Chand Madhok, the owner, for a period of three years beginning from 1952. So his tenancy was from 1952 to 1955. Jahangir Chand Madhok admitted this claim. He further said that at the time of the execution of the mortgage deed of March 2, 1953, he informed Benarsi Das and others, the mortgagees, of the factum of the existence of tenancy on the land in favour of Anant Ram, respondent. The learned Single Judge has believed this and has found as a fact that Anant Ram, respondent, was a tenant of the land under Jahangir Chand Madhok, because of the tenancy created in his favour for three years in 1952. So when Benarsi Das and others took mortgage of the land from Jahangir Chand Madhok, Anant Ram, respondent, became their tenant under the lease he had already from Jahangir Chand Madhok.

(5) On October 20, 1953, the mortgagees, Benarsi Das and others, made an application against both the respondents, Sant Ram and Anant Ram, real brothers, for their eviction under sections 42(b), 43 and 45 of the Punjab Tenancy Act (Punjab Act 16 of 1887), hereinafter to be referred as 'the Tenancy Act of 1887'. It is common ground that

in the application no ground of eviction was stated by the mortgagees. The reason was that on the date on which that application was made by the mortgagees under the provisions of the Tenancy Act of 1887 it was not necessary to state any ground for eviction in so far as the provisions under which the mortgagees sought eviction of the two respondents were concerned. On the record of File No. 87 is a copy of the notice thus served on Anant Ram, respondent. In that notice, all the four survey numbers are mentioned from which eviction of this respondent was sought. No reason for eviction is given in that notice. It is not denied that an exactly similar separate notice was issued to his brother Sant Ram, respondent. The report on the notices was that the respondents had refused to accept service. This is no longer a matter of controversy at this stage. After service of such notice, in view of sections 42(b), 43 and 45 of the Tenancy Act of 1887, the respondents, as tenants, either had two months (sub-section (3) of section 45) within which to institute a suit in a revenue Court to contest the liability to ejection. The respondents never filed any such suit. Sub-section (5) of section 45 of the Tenancy Act of 1887 then says "If within two months from the date of the service of the notice the tenant does not institute a suit to contest his liability to be ejected, a Revenue officer, on application of the landlord, shall, subject to the provisions of this Act with respect to the payment of compensation, order the ejection of the tenant." The two respondents not having filed any such suit thus became liable to be ejected from the land on application by the mortgagees under sub-section (5) of section 45 of the Tenancy Act of 1887.

(6) It is necessary to advert to one aspect of the case here and that is that in the Khasra Girdawaris already referred to, down to Rabi 1954, Sant Ram, respondent, alone appears in cultivation of the whole land as tenant and the name of Anant Ram, respondent, does not appear in the same. Yet on October 20, 1953, the mortgagees applied for ejection under sections 42(b), 43 and 45 of the Tenancy Act of 1887 not of Sant Ram respondent alone but also of Anant Ram respondent. The notices to either were in the capacity of a tenant. This could be in one of the two situations, (1) that after the death of their father Hari Ram, both the respondents, Sant Ram and Anant Ram, remained in possession of the land having inherited the tenancy from him, or (ii) that in the year 1952 for three years up to 1955 Jahangir Chand Madhok had created a tenancy in favour of Anant Ram, respondent, also. So both the respondents were accepted as tenants by the mortgagees on October 20, 1953, when

an application for notice of ejection, as explained above, was made with regard to both of them.

(7) On November 18, 1953, was enacted the Patiala and East Punjab States Union Tenancy and Agricultural Lands Act, 1953 (Pepsu Act 8 of 1953), commonly referred to as 'the President's Act', but by a notification of the State Government under sub-section (3) of section 1 of that Act it came into force on December 3, 1953. This Act made certain changes in the tenancy law in the former Pepsu State giving certain rights to tenants as a measure of protection to them. The Tenancy Act of 1887 was also in force in the former Pepsu State as the law of that State. For the present purpose the new ground that had to be proved by a landlord before he could obtain ejection of his tenant, that is material here, is in clause (a) of sub-section (1) of section 7 of the President's Act, which reads—"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." The rest of clause (a) is not material. This ground with a landlord for eviction of his tenant had to be stated by him on and after the coming into force of the President's Act on December 3, 1953. It will be seen that the mortgagees as landlords of respondents Sant Ram and Anant Ram had given notice for ejection of those respondents under sections 42(b), 43 and 45 of the Tenancy Act of 1887 on November 10, 1953, and obviously thus before the coming into force of the President's Act on December 3, 1953. The notices on the respondents were served before November 15, 1953. It is then obvious that two months within which the respondents could file a suit to contest those notices, according to section 45(3) and (5) of the Tenancy Act of 1887, were to expire on January 14, 1954, that is to say after the coming into force of the President's Act on December 3, 1953. But in view of section 7 of the President's Act, ejection of a tenant could only take place on grounds stated in that section, and the section prohibited expressly the termination of a tenancy otherwise than on the grounds thus stated in it. The respondents had not instituted a suit before a revenue Court within two months of the date of the service of notices on them for their ejection and the mortgagees, as landlords, on April 21, 1954, moved an application under

section 7 of the President's Act for ejection of the respondents from the land. Obviously that application was, though it only mentions section 7 of the President's Act, under sub-section (5) of section 45 of the Tenancy Act of 1887 also. In paragraph 2 of that application the mortgagees said that they 'require the land for their personal cultivation'. This, it will be noticed, is ground (a) of ejection as in sub-section (1) of section 7 of the President's Act. No notice of this application by the mortgagees was ever given to the respondents.

(8) In between, the entries in the Khasra Girdawaris as appearing from File No. 87, Exhibits P/3 to 7 and 13, show that down to Kharif 1953 all the three survey numbers of Patti Jhutti continued in possession of Sant Ram, respondent, alone, but the only survey number in Patti Mahna came to be shown in the tenancy of Anant Ram, respondent. In Kharif 1954, all the four survey numbers were shown in the possession of both the respondents as tenants. In the course of arguments the learned counsel for the respondents has attempted to explain that notices of ejection were given to both the respondents under the same application by the mortgagees as the notices were composite, though the fact of the matter was that on the date of the notice Anant Ram, respondent, was only in occupation as tenant of survey No. 5209/1799 of Patti Mahna, while Sant Ram, respondent, continued in possession as tenant of the remaining three survey numbers of Patti Jhutti. This is not factually correct. The copy of the notice that is already available on the file, and to which reference has already been made above, shows that notice to Anant Ram, respondent, was for his ejection in relation to all the four survey numbers and not only the one in Patti Mahna. There is slight conflict in some of these Khasra Girdawari entries, one showing that Anant Ram, respondent, came to have possession of all the four survey numbers as tenant in Kharif 1954, and another (Exhibits P/7 and 8), that he came in possession of all the four numbers as tenant on March 21, 1955. However, the entries as regards the remaining period down to Rabi 1959 are consistent that both the brothers, respondents Sant Ram and Anant Ram, continued in possession as tenants of the four survey numbers.

(9) On the application of the mortgagees under section 7 of the President's Act, seeking eviction of the respondents on the ground of requirement of the land by them for personal cultivation, no notice having been issued of the same to the respondents, the Qanungo made a report on May 1, 1954, that Anant Ram, respondent,

was in possession of the land, of which one-third was found under crop, and the remaining two-thirds vacant. He obstructed delivery of possession of the land and the Qanungo apprehended danger of breach of the peace so that he made a request for police help.

(10) On May 4, 1954, long after the expiry of two months from the date of service of notice of ejectment on him, Anant Ram, respondent, filed his suit No. 4 (Annexure 'D') under sub-section (3) of section 45 of the Tenancy Act of 1887 to contest the notice of ejectment against him. It was in that suit that Anant Ram, respondent, pleaded that on June 16, 1952, up to June 15, 1955, for a period of three years, Jahangir Chand Madhok, the owner of the land, had leased him that land and he had become tenant of the same. In his written statement to that suit Jahangir Chand Madhok came forward to admit this fact of his having granted tenancy of the land to Anant Ram, respondent, for the period as above. Sant Ram, respondent, was not made a party to that suit of his brother Anant Ram, respondent. Jahangir Chand Madhok, further said in his written statement that he had informed the mortgagees about the existence of that tenancy in favour of Anant Ram, respondent, at the time of execution of the mortgage deed of March 2, 1953. It has already been pointed out that the learned Single Judge has believed this version of those two persons in regard to the tenancy created by Jahangir Chand Madhok in favour of Anant Ram, respondent, for three years between June 16, 1952, and June 15, 1955. It has further been pointed out above that it was during the currency of this tenancy on October 20, 1953, that the mortgagees made an application for notice of ejectment to the respondents under sections 42(b), 43 and 45 of the Tenancy Act of 1887. If this tenancy was not there in favour of Anant Ram, respondent, no such proceedings would have been initiated by the mortgagees against him.

(11) On May 11, 1954, the Collector of Bhatinda made an order that possession of the land be delivered to the mortgagees with the help of the police, directing the parties to appear in the Tehsil on May 17, 1954.

(12) On October 14, 1954, came into force the Pepsu Agricultural Tenants (Temporary Protection and Disability) Ordinance, 1954 (Pepsu Ordinance 6 of 1954), which in section 5(a) provided for postponement of any proceedings for ejectment of a tenant on the ground of personal cultivation for a period of one year from the date of the Ordinance. In the wake of this provision, on February 1, 1955, Anant Ram, respondent, moved an application in his suit to contest ejectment under section 5 of Pepsu Ordinance 6 of 1954, that as no tenant

was liable to ejection for one year from October 14, 1954, so the notice of ejection had become bad and should be cancelled. Obviously, the mortgagees opposed the application. The application was rejected by the Assistant Collector, First Grade, Bhatinda, on May 17, 1955. In the meantime on March 4, 1955, had been enacted the Pepsu Tenancy and Agricultural Lands Act, 1955 (Pepsu Act 13 of 1955), which, for the present purposes, reproduces section 7 as in the President's Act. The Assistant Collector was of the opinion that the application of Anant Ram, respondent, neither attracted section 5 of Pepsu Ordinance 6 of 1954 nor section 7 of Pepsu Act 13 of 1955, and that the suit of Anant Ram, respondent, had to be disposed of on merits. On September 21, 1955, Anant Ram, respondent, moved another application in his suit to contest the notice of ejection, that the mortgagees had received from him, in another case, Rs. 400 towards the balance of the lease money for the year 1954-55, and Rs. 950 towards one-half of the lease money for the year 1955-56 as an advance and that he was thus a tenant of the land up to June 15, 1956, on payment of cash rent. He prayed that the notice of ejection be cancelled. To that the mortgagees made a reply on October 13, 1955, admitting the receipt of Rs. 1,350 from Anant Ram, respondent, as cash rent for the three survey numbers of Patti Jhutti, but contested the application on the ground that full payment of the cash rent had not been made by this respondent for the years 1952—1955 and that as he was also tenant of the one survey number in Patti Mahna, for which he had not paid the rent, so the application be rejected. The application was rejected.

(13) In his suit to contest notice of ejection Anant Ram, respondent, did not appear on the date of hearing on April 25, 1956, and so the suit was dismissed for default by the Collector on that day, annexure 'D. 1'.

(14) It was after that that on May 3, 1956, the mortgagees moved an application, annexure 'R-2', for restoration of the file for recovery of possession of the land and for an order thereon, because it appears that in the meantime that file had been consigned to the record-room. On May 11, 1956, warrants of ejection were issued against the respondents for their ejection from the land, in pursuance of the Collector's order of May 11, 1954; and consequent upon the issue of warrants of ejection against the respondents of the above date, the warrants were executed on May 13, 1956 (Qanungo's report Annexure 'E'). It was said that both the respondents were found at the spot. Possession of vacant part of the land was delivered to the mortgagees by demarcation and of the land under crop in a symbolical

manner. On May 14, 1956, of the mortgagees, Benarsi Das gave the receipt, Annexure 'F', for having been put in possession of the land. On the very day, that is to say on May 14, 1956, Anant Ram, respondent, moved an application, Annexure 'G', for delivery back of the land of both the Pattis saying that the same had been in his possession and earlier in the possession of his ancestors for more than twenty years from the time of Jahangir Chand Madhok, and pointing out that he had paid half the rent to the counsel for the mortgagees for the period between June 15, 1955, and June 15, 1956, while depositing the remaining half in Court. He said the mortgagees had no right to obtain and retain possession of the land before June 15, 1956. He took the stand that the delivery of possession was a mere paper transaction having been carried out in his absence and that of his brother Sant Ram, respondent. He made an allegation that the mortgagees had started destroying the standing crop of which the value was something like Rs. 3,000 to Rs. 4,000. It is during the pendency of this application of Anant Ram, respondent, that on June 3, 1956, the mortgagees gave a lease for one year of all the four survey numbers, leaving out a small area of 1 Bigha and 14 Biswas, to Anant Ram, respondent, with a condition that he would not introduce sub-tenants. Copy of the lease deed is Annexure 'H'.

(15) On January 10, 1957, the appellant purchased all the four survey numbers in question by a sale deed, copy Annexure 'J', from the owner, Jahangir Chand Madhok. On December 12, 1957, and again on March 16, 1959, the appellant moved an application for ejection of Anant Ram, respondent, according to section 7 of Pepsu Act 13 of 1955 on the grounds that he was a small land-owner, and that Anant Ram, respondent had not only failed to execute a further lease deed, but had sublet the land to his brother Sant Ram, respondent (Annexures 'K' and 'L'). On June 20, 1958, the appellant made an application, Annexure 'M', in form VII-A, selecting the entire area of the land with him for his personal cultivation being within the permissible area according to section 32-B of Pepsu Act 13 of 1955, on which application, on January 25, 1960, the Collector made an order that the appellant was a small landowner having only 9.29 standard acres and was not required to make any return according to section 32-B of that Act.

(16) In the meantime on February 11, 1959, both the respondents, Sant Ram and his brother Anant Ram, moved an application under section 22 of Pepsu Act 13 of 1955 for purchase of the four survey numbers in question. Although the original application has not been available, but there is no doubt that such an application was made and the learned Judge has traced the date of that application as

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February 11, 1959. It is section 20 of that Act which gives the definition of the expression 'tenant' for the purposes of acquisition of proprietary rights by a tenant, and that section reads—

"20. 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 7-A; or

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

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 7-A."

The Prescribed Authority (Naib-Tehsildar, Agrarian) at Bhatinda dismissed that application on May 17, 1960. On August 17, 1960, the Collector at Bhatinda accepting the appeal of the respondents, remanded the case back to the President Authority for redecision of the question whether the respondents were or were not entitled to purchase land of the three survey numbers of Patti Jhutti. The decision with regard to the fourth survey number of Patti Mahna was against the respondents and it was found that they were not entitled to purchase that field number because they had not shown possession of it for a period of twelve years prior to the commencement of the President's Act. There is no longer any dispute between the parties about that survey number. The reason why reference has continuously been made above to this survey number was, first, to complete the picture and, secondly, because the learned counsel for the appellant has contended that the ejectment notice given to Anant Ram, respondent, was due to the fact that he had been in possession of this particular field number as a tenant, but, as has already been shown, this is not so, because the notice of ejectment to him is in regard to all the four survey numbers. The dispute hence onwards has continued between the parties with regard to the three survey numbers of Patti Jhutti. The appellant failed before the Financial Commissioner in revision on December 5, 1960, and in a review on March 20, 1961 (Annexures 'A' and 'R'). On September 5, 1961, the Prescribed Authority (Assistant Collector) allowed the application of the respondents under section 22 of Pepsu Act 13 of 1955 for purchase of the land with regard to the three field numbers of Patti Jhutti (Annexure 'S'). He found that according to the Khasra Girdawaris or Crop Inspection Register the cultivation of

the land had been with the respondents and their father continuously from Kharif 1994 BK. (1938) to Rabi 1958. He then pointed out that according to sub-section (2) of section 7A of Pepsu Act 13 of 1955, cultivation by the respondents for more than 12 years before the President's Act had been verified whereas cultivation for only 12 years was necessary for the acquisition of proprietary rights. He found further that the respondents were entered in the Khasra Girdawaris as cultivating the land continuously from 1953 to 1958 with no break in their possession. After discussing the evidence with regard to the delivery of possession to the predecessors-in-title of the appellant, that is to say the mortgagees, pursuant to the proceedings taken for the ejectment of the respondents, he came to the conclusion that 'the proceedings regarding delivery of possession were only a paper transaction and the tenants remained in possession of the land in dispute as before and have been in possession. They kept paying the lease money to the landlords according to the terms of the lease deed'. There was an appeal by the appellant from the order of the Prescribed Authority which was heard by the Collector of Bhatinda, who, on November 30, 1961, accepting that appeal set aside the order of the Prescribed Authority (Annexure 'T'). The Collector again on review of the evidence found that the respondents had in fact been dispossessed on May 13, 1956, pursuant to the Collector's order of May 11, 1954. Among other matters he relied upon the fact that Anant Ram, respondent, had made an application for restoration of the possession to the Collector and had then after May 13, 1956, and on June 3, 1956, executed a new lease deed in favour of the mortgagees. He was further of the opinion that Pepsu Act, 15 of 1956, which for the first time enacted section 7-A, in Pepsu Act, 13 of 1955, came into force on October 29, 1956, by which time the respondents had already been dispossessed of the land. So, as they were not in possession of the land on the date Pepsu Act 15 of 1956, came into force enacting section 7-A, in Pepsu Act, 13 of 1955, the respondents were not entitled to purchase the proprietary rights in the land under section 22 of the last-mentioned Act. The respondents then went in revision before the Financial Commissioner who, on May 15, 1962, by his order, copy Annexure 'U', reversed the order of the Collector restoring that of the Prescribed Authority, thus allowing the application of the respondents to purchase the proprietary rights in the land. The learned Financial Commissioner was of the opinion that a notice of ejectment under sections 42(b), 43 and 45 of the Tenancy Act of 1887, having been given to the respondents and a suit to contest that notice having been filed and dismissed in default on April 25, 1956, the respondents could only be ejected in view of sub-section (6), of section 45 of that

Act, by a decree of the Court concerned to that effect, and as no such order or decree was passed by the Court concerned when the suit of the respondents was dismissed, all subsequent proceedings resulting in the ejection of the respondents were entirely incompetent and without any authority in law. Another reason which prevailed with the learned Financial Commissioner was that no ground of ejection as in section 7 of Pepsu Act 13 of 1955 was set out by the mortgagees for ejection of the respondents. On these considerations the learned Financial Commissioner was of the opinion that the order of ejection of the respondents was without jurisdiction and a nullity. He, therefore, proceeded to ignore that order, which meant, according to him, that the respondents were never ejected or dispossessed from the land. There was an argument before the learned Financial Commissioner that, in any event, of the two respondents, Anant Ram, respondent, was not in possession of the land as per Khasra Gardawaris between 1951 and 1954, but the learned Financial Commissioner pointed out that those entries could not be taken as correct for the reason that the same were inconsistent with the preceding and succeeding entries over a large number of years. He came to the conclusion that both the respondents were thus in possession of the three survey numbers of Patti Jhutti at the time of the coming into force of the President's Act. As stated, he allowed their revision application and restored the order of the Prescribed Authority whereby they had been allowed to acquire the proprietary rights in the land in question. The appellant sought review of this order of the Financial Commissioner, which was dismissed on June 28, 1962 (Annexure 'W').

(17) It was after that that the appellant filed his petition under Articles 226 and 227 of the Constitution questioning the legality and validity of the order of the Financial Commissioner. The learned Single Judge on February 6, 1964, dismissed that petition, leaving the parties to their own costs and, as stated, the case is reported as *Lakshbir Singh v. Anant Ram* (1). The learned Judge agreed with the Financial Commissioner that after the coming into force of Pepsu Act, 8 of 1953, the President's Act, the notice of ejection earlier given by the mortgagees to the respondents under sections 42(b), 43 and 45 of the Tenancy Act of 1887, became ineffective and subsequent ejection order made against the respondents after the date of the coming into force of the President's Act, with section

(1) 1964 P.L.R. 610.

7 in it, was without legal authority, not being in conformity with that section or section 45 of the Tenancy Act, of 1887. The learned Judge then found that there was evidence in support of the claim of Anant Ram respondent that Jahangir Chand Madhok had given him tenancy of the land for three years from June 16, 1952, and so he was tenant of the land down to June 15, 1955, and further that he had from the mortgagees another lease deed on June 3, 1956. He not having been ejected according to law, the proceedings in ejection were not effective against him. So he continued in possession of the land down to February 11, 1959, when both the respondents moved an application under section 22 of Pepsu Act, 13 of 1955 for purchase of the proprietary rights in the land. In any event, Anant Ram, respondent, was entitled to purchase the land because all that he had to show was that he was a tenant as that expression is defined in section 20 of Pepsu Act 13 of 1955, which he succeeded to do, because he could tag the possession of his brother and father to that of his own so as to make twelve years' possession of the land prior to the coming into force of the President's Act. The learned judge pointed out that although there was evidence that Sant Ram, respondent, had been in possession of the land along with his brother Anant Ram, respondent, but even if it was otherwise he was not disposed to interfere with the order of the Financial Commissioner on the ground that Sant Ram, respondent, could not purchase, when his brother Anant Ram was found to have a right to purchase the land. It is against the judgment and order of the learned Single Judge that the appellant has filed this appeal under clause 10 of the Letters Patent.

(18) The main point for consideration in this appeal is the question of ejection and dispossession of the respondents on May 13, 1956, pursuant to proceedings for ejection taken against them by the mortgagees under sections 42, 43 and 45 of the Tenancy Act of 1887. It has been urged on the side of the appellant that not only is there the report of the Qanungo that possession of the vacant portion of the land was actually delivered by demarcation to the mortgagees and of the land under crop in a symbolical manner, but there is also the receipt filed by the mortgagees that they had taken possession of the land in question. Support is sought also from the application by Anant Ram, respondent, of May 14, 1956, wherein he prayed for delivery back of the possession of the land. It is said that unless the respondents had been dispossessed on May 13, 1956, there was no occasion for Anant Ram, respondent, to move any such application. The learned counsel for the appellant refers to *Mewa*

v. *Amar Singh* (2), *Umrao v. Nemi Chand* (3) and *Hans Raj v. Brahmi Devi* (4), that delivery of symbolical possession is equivalent to delivery of actual possession and operates as dispossession of the person previously in possession, such as a judgment-debtor or a tenant. So it is urged on the side of the appellant that the respondents were in fact dispossessed of the whole of the land on May 13, 1956. It is, however, argued on the side of the respondents that the delivery of possession of the land on May 13, 1956, was merely a paper transaction and the application of Anant Ram, respondent, on the next day was just to meet such a transaction, the fact of the matter remaining that the respondents were never dispossessed of the land at all. The revenue entries in the Khasra Girdawaris from Kharif 1995 BK. (Kharif 1938) down to Rabi 1943 showed the father of the respondents in possession of the land as tenant and, on his death, from Kharif 1943 to Rabi 1953, the possession of the land is shown with Sant Ram, respondent, as tenant, and thereafter in Kharif 1954, both the respondents are shown in possession of the land. It has already been pointed out that in regard to the year 1954, there is inconsistency in the Khasra Girdawari entries whether it was Sant Ram, respondent, alone or whether both the respondents were in possession of the land, but it is clear that Sant Ram, respondent, was in possession of it. From Rabi, 1955, onwards Anant Ram, respondent, has been in possession of the land. Actually he was obviously in possession of the land from 1952, when he obtained a lease for three years from Jahangir Chand Madhok. It is not only that Jahangir Chand Madhok, admitted that lease, which he had given to this respondent before he mortgaged the land, but it were the mortgagees also who gave notices of ejectment under sections 42, 43 and 45 of the Tenancy Act of 1887 to both the respondents and, as already pointed out, at least the notice served on Anant Ram, respondent is on the file. It is not denied that exactly similar notice was served on Sant Ram, respondent. The notices were said to have been duly served on the respondents before November 15, 1953. It is apparent that unless both the brothers were in possession of the land as tenants on the date the notices were issued to them and served on them, the mortgagees would not have issued such notices to both of them. They would only issue notice of ejectment to the tenant in possession and not a person not in possession as a tenant. It is thus not open to the appellant to urge that both the respondents were not in possession of the land between 1952 and 1955 as tenants. From

(2) 1958 P.L.R. 249.

(3) 1967 P.L.J. 249.

(4) 1960 P.L.J. 71.

Rabi 1955, down to the date of application by the respondents under sections 20 and 22 of Pepsu Act 13 of 1955, for purchase of the proprietary rights in the land, at least Anant Ram, respondent, has been in possession of the land as tenant. Apart from the tenancy in his favour for three years from 1952 to 1955 from Jahangir Chand Madhok, he also obtained a tenancy from the mortgagees for one year ending June 15, 1956, in the wake of which tenancy the previous notice of ejection with regard to the earlier tenancy would be ineffective. In any event, the revenue records show that one or the other respondent has been, or at times both the respondents have been, in possession of the land as tenants down to the date of their application for purchase of proprietary rights in the same, which application was moved by them in 1959. But what is pressed on the side of the respondents is that even if on May 13, 1956, they were dispossessed pursuant to the ejection notice by the mortgagees, their dispossession was contrary to law, and it being unlawful they did not cease to be tenants of the land. It is settled 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 legal relationship of landlord and tenant continues notwithstanding the dispossession *Joti v. Maya* (5) and *Cheta v. Baija* (6). have put this matter beyond the pail of argument. So, if what the respondents urge is correct that their alleged dispossession of the land was not according to law and was wrongful, then they did not cease to be tenants of the mortgagees, the landlords, and the relationship of landlord and tenant continued between the parties. The reason why it is urged on the side of the respondents that their alleged dispossession of the land was not according to law is that it was contrary to section 7 of the President's Act, because no reason for their ejection as envisaged by that provision was given in the notice of ejection, and no such reason, therefore, having been given, the ejection was prohibited by that provision. Section 4 of the President's Act provided that the provisions of that Act were to override all other laws, statutory or otherwise, inconsistent with those provisions. The President's Act was in force from December 3, 1953. The notices for ejection against the respondents under sections 42, 43 and 45 of the Tenancy Act of 1887 were issued and served on them before that date. At that time under section 42(b) of the Tenancy Act of 1887 it was not necessary for the landlord to give reason for ejection of a tenant. Consequently no reason for ejection of the respondents was given in

(5) 44 P.R. 1891 (F.B.).

(6) A.I.R. 1927 Lah. 452 (F.B.).

the notices and in the one notice to Anant Ram, respondent, which is on the file, no reason whatsoever for ejection is to be found. The position undeniably is the same with regard to the notice served on Sant Ram, respondent. Now, if nothing else happened and, for a period of two months, the respondents did not institute a suit to contest the notice for ejection, they would have been liable to ejection on an application to the revenue officer concerned according to the provisions of section 45 of the Tenancy Act of 1887. However, before even the two months expired from the date of the service of the notices on the respondents, on December 3, 1953, came into force the President's Act. By section 7 it prohibited the termination of any tenancy except in accordance with its provisions or except on the grounds stated in section 7, and one of the grounds was that the landlord had reserved the land for self-cultivation or having a permissible area with him may seek ejection of a tenant when he wants to cultivate the land himself. No doubt the respondents did not institute a suit within two months of the service of the notices of ejection on them as it was found that in fact the notices had been served on them before November 15, 1953. So the suit filed by Anant Ram, respondent, after the expiry of two months of the notice served on him would not attract the provisions of section 45 of the Tenancy Act of 1887, apart from the fact that he permitted the suit to go by default. If the suit had been filed within those two months, then ejection of the respondents could only take place in view of sub-section (6) of section 45 of the Tenancy Act of 1887 pursuant to a decree made in that respect, but as the suit was not filed within two months but a long time after the expiry of two months, no part of section 45 of that Act was attracted. The proceedings of that suit by Anant Ram, respondent, may, therefore, be completely ignored for the present purpose. No suit having been filed by the respondents to contest the notices of ejection according to the terms of section 45 of the Tenancy Act of 1887, under the provisions of that section, on an application by the mortgagees, the landlords, they became liable to ejection from the land. The President's Act does not deal with the manner and method or the procedure of ejection, but only deals with the grounds of ejection. So obviously the procedure of ejection continued to be the same as provided in the Tenancy Act of 1887, that is in the alternative, by way of a suit before a revenue Court or by way of summary proceedings in the shape of a notice for ejection of the tenant having regard to sections 42(b), 43 and 45 of that Act. In a rather thoroughly considered judgment Bishan Narain J. in *General Shivdev Singh v. Badan Singh* (7) held as above. Same conclusion is also available

from the observations of the learned Judges in *Hartej Bahadur Singh v. The State of Punjab* (8). So the mortgagees could proceed to ejectment of the respondents pursuant to the summary procedure provided in sections 42, 43 and 45 of the Tenancy Act of 1887, but on and from December 3, 1953, they could only obtain ejectment of their tenants, the respondents, on the grounds in section 7 of the President's Act. The notices of ejectment having been served before that date, as stated, obviously the same did not contain any reason for ejectment of the respondents. Those notices as such became useless and infructuous for the purpose of obtaining ejectment of the respondents from the land. In *General Shivdev Singh's case* (7) Bishan Narain J. further pointed out that an enquiry in proceedings under section 45(5) of the Tenancy Act of 1887 was implicit in the section itself before an order for ejectment could be made. Sub-section (5) of section 45 of that Act comes into operation when after no suit to contest an ejectment notice is filed, within two months of the date of service of such notice, by the tenant, and the landlord then makes an application for ejectment of his tenant. In the circumstances two courses were open to the mortgagees (i) to serve fresh notices under sections 42, 43 and 45 of the Tenancy Act of 1887 for ejectment of the respondents giving any of the grounds of ejectment available to the mortgagees under section 7 of the President's Act, or (ii) when making an application under sub-section (5) of section 45 of that Act for ejectment of the respondents, they could give the ground of ejectment as in section 7 of the President's Act, and if on enquiry, as pointed out by Bishan Narain J. in *General Shivdev Singh's case* (7) the revenue officer found that the ground was made out, he may have proceeded to order ejectment of the respondents. The mortgagees did not pursue the first course, but they endeavoured to follow the second. When they made an application under sub-section (5) of section 45 of the Tenancy Act of 1887 for ejectment of the respondents, in that they stated that the area of the land with them was within the permissible limits as required by the President's Act and that they wanted ejectment of the tenants, the respondents, because they were going to cultivate the land themselves. On that application no enquiry was held by the revenue officer. No notice or information of the same was given to any of the respondents. The respondents never came to know of the ground on which they were being ejected. The revenue officer straightway proceeded to make an order of ejectment. That order was, therefore, contrary to law, because no information about the ground alleged by the mortgagees for the eviction of the respondents was made known to the latter and no enquiry

(8) I.L.R. (1964) Pb. 618.

about the correctness or otherwise of the ground was made by the revenue officer making the order of ejection. In fact there could be no enquiry without associating the respondents with the same and without informing them of the matter of contest, that is to say, the ground on the basis of which their eviction was sought by the mortgagees. The order of eviction thus made against the respondents was contrary to law and was wrongful. It follows that any dis-possession of the respondents from the land pursuant to any such order was itself contrary to law and wrongful. It has already been pointed out that it is settled that dispossession contrary to law or wrongful dispossession of a tenant does not put an end to his tenancy or the relationship of landlord and tenant between the parties. Thus the proceedings in the notices for ejection to the respondents have to be entirely ignored for the present purpose and the consideration of the present appeal can only proceed on the basis that there never was ejection of the respondents from the land in question according to law and any dispossession of them contrary to law and wrongful does not derogate from their status as tenants of the land under the mortgagees. Under the provisions of the Tenancy Act of 1887 a tenant only remains a tenant so long as he has possession of the land. This again is unquestionably settled. So, when wrongful or unlawful dispossession of a tenant does not disturb his tenancy, it means only that for this purpose the tenant is accepted by law to have continued in possession of the land. The respondents are, in the circumstances, not in the least affected by the order of ejection made against them, which order was contrary to law and they are not at all affected by any attempt to dispossess them of the land on May 13, 1956.

(19) The dispossession of the two respondents on May 13, 1956, is to be ignored. No entry in the Khasra Girdawaris indicates in the least that the respondents were dispossessed for any crop. It has already been shown that from Kharif 1938 to Rabi 1943 (Exhibits P/2 and 3) Hari Ram, father of the respondents, was in possession of the land. From Kharif 1943 to Rabi 1955 Sant Ram, respondent, was in possession (Exhibits P/3 to 7 and P. 15). In between, from Rabi 1953 Anant Ram, respondent also joined in possession with his brother Sant Ram, respondent and both continued in possession of the land down to Rabi 1959 (Exhibits P/8 to 13 and P. 1). So, first Hari Ram, father of the respondent, was in possession of the land, then, on his death, his son Sant Ram, respondent, was in possession of the land down to Rabi 1953, and from Kharif 1953, down to Rabi 1959, both the respondents were in possession. It has been urged on the side of the appellant that a lease of the land was given to Anant Ram, respon-

dent, by Jahangir Chand Madhok, from 1952 to 1955, and then the mortgagees, on June 3, 1956, again gave lease of the land to Anant Ram, respondent, after abortive proceedings, for dispossession of the respondents, and Sant Ram, respondent, was a sub-tenant under Anant Ram, respondent. This is not, however, borne out from the entries in the Khasra Girdawaris, but as Sant Ram, respondent, was not a party to any of those leases, he cannot be affected by any such contract by his brother Anant Ram, respondent, first with Jahangir Chand Madhok and then with the mortgagees. He has continued in possession of the land in his own right as tenant throughout down to Rabi 1959. It was on February 11, 1959, that the two respondents moved an application under section 22 of Pepsu Act 13 of 1955, for the purchase of proprietary rights in the land. They were then in possession of the land.

(20) The definition of the expression 'tenant' in section 20 of Pepsu Act 13 of 1955 has already been reproduced above. The first requisite is that the person concerned is to be a tenant as that expression is defined in section 2(k) of this very Act, and there the definition of the word 'tenant' is the same, for the present purpose, as in the Tenancy Act of 1887. In section 4(5) of this last-mentioned Act the word 'tenant' is defined to mean 'a person, who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person', and though certain defined categories are excluded from the definition, but those are not attracted here. The two respondents were tenants within this definition of the word 'tenant'. The first requisite is, therefore, satisfied by them. The second requirement of section 20 of Pepsu Act 13 of 1955 is that such a tenant is not liable to ejection either under clauses (a) and (b) of sub-section (1) of section 7-A, or under clauses (a) and (b) of sub-section (2) of section 7-A of this very Act. It has been contended on the side of the appellant that it is clauses (a) and (b) of sub-section (1) of section 7-A that are attracted to the present case because the appellant owns less than 30 standard acres of land and his land falls within the permissible limit of 30 standard acres and he wants the same for his personal cultivation. But the case of each one of the respondents comes directly under sub-section (2) of section 7-A and, therefore, sub-section (1) of that section cannot apply to either of them. Sub-section (2) of section 7-A reads— "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 an area of fifteen standard acres, if the area under the personal cultivation of the tenant exceeds fifteen standard acres." There is a proviso which is not material, but the explanation is relevant and it reads—"In computing the period of twelve 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." It has been pointed out that the land, subject of controversy in this litigation, is less than fifteen standard acres. The President's Act came into force on December 3, 1953. On that date both the respondents were in possession of the land according to Khasra Girdawari, Exhibit P. 13. Twelve years prior to that are to be reckoned for the matter of possession of the land including the possession of the father or the brother of the tenant. Earlier to 1953, Sant Ram, respondent, was in possession back to 1943, and earlier to 1943 the respondents' father Hari Ram was in possession back to 1938. In this way Sant Ram, respondent is entitled to tag to his possession in 1953, the earlier possession of his father back to 1938 and Anant Ram, respondent, is entitled to tag the possession of his brother. Sant Ram, respondent, back to 1943 and of his father Hari Ram, back to 1938. So both the respondents were in possession of the land as tenants for a continuous period of more than twelve years before the coming into force of the President's Act on December 3, 1953. They thus fulfil the first requisite of sub-section (2) of section 7-A. Because the land in question is less than fifteen standard acres and has been in the cultivation of the respondents, clause (a) of sub-section (2) of section 7-A is attracted to the case. Consequently neither of the two respondents can be ejected in view of clause (a) of sub-section (2) of section 7-A of Pepsu Act 13 of 1955. The second requisite of section 20 of that Act is also satisfied by either respondent. So either respondent is a tenant as that expression is defined in section 20 of that Act. Under section 22 of that very Act, they are entitled to purchase the proprietary rights in the land in question, they having satisfied the requirements of section 20 of Pepsu Act 13 of 1955.

(21) The consequence, then is that there is no ground whatsoever for interference with the judgment and order of the learned Single Judge. This appeal, therefore, fails and is dismissed with costs.

RANJIT SINGH SARKARIA, J.—I agree.

K. S. K.