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short answer to this is that even this provision has not been made to have retrospective effect and the stage at which the report of the police to the Magistrate had to be sent had long ago passed. In these circumstances, we are of the opinion that no provisions of the amended Code relating to the supply of copies of statements recorded under s. 161(3) can apply to the present case. But in view of the fact that even if they are applicable, we are satisfied that there is no prejudice caused to the accused, as stated already, and we do not think it necessary to express any final opinion on this question.

On an examination of the records in this case and of the prosecution evidence in the Arms Act case, we feel satisfied that no prejudice has been caused to the accused by his not having been supplied with the statements of witnesses recorded by the police during the investigation of the Arms Act case, when the Sessions trial was going on and hence the appeal is dismissed.

CIVIL MISCELLANEOUS.

Before Bishan Narain, J.

GENL. SHIVDEV SINGH AND OTHERS,—*Petitioners.*

versus

BADAN SINGH,—*Respondent.*

Civil Miscellaneous No. 58 of 1956.

1957

April, 24th

Punjab Tenancy Act (XVI of 1887)—Sections 41, 43 and 45—Pepsu Tenancy and Agricultural Lands Act (President's Act No. 8 of 1953)—Section 7—Effect of—Whether impliedly repeals sections 41, 43 and 45 of Punjab Tenancy Act—Landlord—Whether can evict tenant under sections 43 and 45 of the 1887 Act, after the passing of 1953 Act—Procedure to be followed—Sub-clause (5) of section 45—Inquiry under—Whether permissible—Suit filed under section 45(3), failing for want of sufficient court-fee—

Whether ejectment can be ordered under section 45(5)—Constitution of India (1950)—Articles 226 and 227—Orders under—When to be made.

Held, that section 41 of the Punjab Tenancy Act, 1887 and section 7 of Pepsu Tenancy and Agricultural Lands Act, 1953, are inconsistent and irreconcilable and the later provision is a complete substitution for the old one so far as it relates to tenants-at-will. Both these provisions have the same purpose of laying down circumstances in which a tenant-at-will can be evicted. Section 41 of the Punjab Tenancy Act is, therefore, impliedly repealed by section 7 of the 1953 Act, so far as it relates to tenants-at-will. But section 7 of the 1953 Act does not repeal sections 43 and 45 of the Punjab Tenancy Act. Section 7 of the 1953 Act relates to rights and liabilities of landlords and tenants so far as they relate to latter's ejectment. Sections 43 and 45 of the 1887 Act, on the other hand, relate to procedure for securing eviction of the tenants. There cannot be any irreconcilable inconsistency between the two provisions as they relate to different subject-matters and have been enacted for different purposes. It may be that after the enactment of section 7 it would be more convenient and appropriate for a landlord to file a suit for ejectment but that by itself does not mean that the alternative mode has been abrogated or impliedly repealed.

Held also, that the landlord can evict tenants-at-will only on satisfying the conditions laid down in section 7 of the 1953 Act. This right can be enforced only under the Punjab Tenancy Act, in view of the mandatory provisions of section 77(3) of the Act which expressly excludes the determination of disputes relating to tenants of agricultural land by a Civil Court. Every statute should be regarded as a part of the whole body or system of law and it is not necessary that each statute must be complete entity by itself. When the 1953 Act does not lay down any procedure for enforcing rights created therein, then one must look and see if there is any other statute which lays down that procedure. In the present case, the 1887 Act is the only statute that lays down the procedure for enforcing the rights between the landlords and the tenants of agricultural lands. It, therefore, follows that the tenants-at-will can be evicted only by adopting the procedure laid down in the Punjab Tenancy Act. After the enactment of section 7 of the 1953 Act, an application under section 43

of the 1887 Act must satisfy and comply with this later section and must give grounds on which the applicant wishes to evict his tenants. Under section 45(1) of the 1887 Act, the revenue officer shall cause ejectment notice to be served on the tenant if it is not open to objection on the face of it and under sub-clause (3) of this section the tenant, who intends to contest his liability to ejectment, must file a suit within the prescribed time of two months. If he files the suit, then the landlord will have to prove the grounds on which he seeks eviction, otherwise the suit would be decreed and the tenant will not be ordered to be evicted. If the landlord succeeds in proving his allegations under section 7 of the 1953 Act, in the suit then the tenant's suit will be dismissed and decree for ejectment will be passed as provided in sub-clause (6) of section 45 of the 1887 Act. It is wrong to suggest that in a tenant's suit the landlord will not have to prove these grounds and that the tenant must prove his non-liability to eviction. As section 7 of the 1953 Act is worded, it is always for the landlord to prove the grounds on which he seeks his tenant's eviction, whether the plaintiff is the landlord or the tenant. If no suit is filed by a tenant then sub-clause (5) of section 45 of the 1887 Act, comes into operation and the revenue officer shall order the ejectment of the tenant.

Held further, that sub-clause (5) of section 45 of the 1887 Act does not prevent, expressly or by necessary implication, the revenue officer from deciding whether the grounds specified in section 7 of the 1953 Act exist or not. Although there is no mention of such an enquiry in this sub-clause, it must be deemed to be implicit in the absence of any provision expressly excluding it. The revenue officer under this clause acts as a judicial court and his procedure should be so moulded as to further and advance the object and purpose of the enactment rather than to retard it.

Held, that if the suit filed under section 45(3) of the 1887 Act, fails for any reason including the insufficiency of court-fee, the revenue Court dismissing the suit should pass a decree for ejectment and if it is not done, it is not thereafter open to the revenue courts to order ejectment on an application under section 45(5) of the said Act.

Held, that no party is entitled to claim an order under Article 226 or 227 of the Constitution as a matter of course. An order under these provisions of the Constitution may

be made only to advance justice. It cannot be made on a technical ground which may have the effect to perpetuate a wrong done to the opposite party.

Cooper v. *The Board of Works for the Wandsworth District* (1), *Vestry of St. James and St. John, Clerkenwell* v. *Feary* (2), *Attorney-General* v. *Hooper* (3), referred to.

Petition under Article 227 of the Constitution of India praying that since the judgment of all the Revenue officers in other twenty-eight connected cases are the same, therefore, the petitioners be dispensed with from filing the judgments of the Revenue Officer in other petitions.

R. K. DASS, for Petitioners.

DALIP CHAND, for Respondent.

ORDER

Bishan Narain, J.

BISHAN NARAIN, J.—The petitioners, Shivdev Singh and Gurdarshan Singh, are *biswedars* of village Amlasinghwala, Tehsil Barnala. The respondents held agricultural lands under the petitioners as tenants-at-will from year to year. The petitioners applied to the revenue officer for issue of 29 separate notices under section 45(1) of the Punjab Tenancy Act, 1887, hereinafter called the 1887 Act, for service on the various tenants. After prolonged proceedings the Financial Commissioner set aside the orders of ejectment passed against the respondents. The orders of the Financial Commissioner are of 31st of May, 1956. The landlords have filed these 29 separate writ petitions under Article 227 of the Constitution to get the orders of the Financial Commissioner set aside. As the facts leading to these petitions and the questions that require determination are common, it will be convenient to decide all these petitions by this one judgment.

The facts leading to these petitions are these. The landlords applied to the Tehsildar, Barnala,

(1) 32 Law. J. Rep. (N.S.) C.P. 185—188
(2) (1890) 24 Q.B.D. 703
(3) (1893) 3 Ch. D. 482

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for service of notices of ejectment on the tenants under section 43 read with section 42(b) of the 1887 Act. They claimed this relief on the grounds that the tenants had not paid rent and had refused to execute *kabuliyats*. On 1st of November, 1954, the Tahsildar issued the required notices which were duly served on the tenants on 15th of November, 1954. It is common ground that these notices were served in accordance with the provisions laid down in sub-clause (1) of section 45 of the 1887 Act. The proceedings were then taken under section 45 of that Act. The tenants filed suits before the Assistant Collector, Barnala, on 20th of December, 1954, contesting their liability to be ejected. These suits were filed within two months from the date of service of notices as laid down in section 45. The landlords contested the suits and raised a preliminary objection that the plaints were not sufficiently stamped. The Assistant Collector framed an issue to this effect and then upholding the objection fixed a date by which the insufficient court-fee was to be made good. The tenants, however, failed to do so and ultimately the Assistant Collector dismissed the suits on 29th of March, 1955. The tenants appealed to the Collector, Sangrur, who affirmed the finding of the trial Court regarding insufficiency of court-fee but modified the orders by rejecting the plaints instead of dismissing the suits. Thereafter the landlords applied on 10th of June, 1955, to the Tahsildar to enforce the notices of ejectment issued to the tenants by evicting them. The Tahsildar passed the required orders on 23rd of June, 1955. The tenants appealed and the Collector set aside the orders of the Tehsildar on the ground that the tenants could not be evicted after 15th of June, 1955. The landlords then appealed to the Commissioner who by his orders, dated 13th of March, 1956, remanded the cases to the Collector as he found the latter's orders to be vague and further

directed him to decide other objections raised by the tenants against their eviction. The Collector overruled the tenants' objections and ordered their eviction between 1st of May and 15th of June, 1956. The tenants then applied to the Financial Commissioner to get the Commissioner's orders revised and reversed. The Financial Commissioner by his Orders dated 31st of May, 1956, came to the conclusion that the tenants could be evicted only on the grounds laid down in section 7 of the Patiala and East Punjab States Union Tenancy and Agricultural Lands Act, 1953 (President's Act No. 8 of 1953), hereinafter called the 1953 Act, and that the proceedings under section 45 of the 1887 Act could not be taken against the tenants. Accordingly the Financial Commissioner set aside all the orders of the lower Courts. Hence these petitions by the landlords.

It is common ground that the 1887 Act applies to the area in question. This Act lays down the rights and obligations of landlords and tenants of agricultural land and also the procedure for enforcing these rights. The occupancy tenants and those for fixed terms are liable to ejectment on certain grounds specified in sections 39 and 40 of this Act respectively. Section 41 lays down that a tenant from year to year may be ejected at the end of any agricultural year which commences on 16th of June. Therefore, under the 1887 Act the landlords can get tenants evicted without alleging or proving any ground for the same. Under this Act a tenant can be evicted only in execution of a decree for ejectment, but section 42 has provided two exceptions to this rule—(1) when a decree for arrears of rent remains unsatisfied and (2) when the tenant is a tenant-at-will, i.e. from year to year. A tenant-at-will may be evicted by following the procedure laid down in section 45 of the 1887 Act after getting a notice of eviction served on him. Thus a landlord, who wishes to evict a tenant, can

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either file a suit for ejectment under section 77(3) (e) of the 1887 Act or proceed by notice under section 43 and then follow the procedure laid down in section 45 of this Act. The landlords in the present cases have chosen to follow the procedure laid down in sections 43 and 45 of the Act.

The 1953 Act was enacted to amend and consolidate the law relating to tenancies of agricultural lands and to provide for certain measures of land reforms. This Act came into force on 18th of November, 1953. Sections 7 to 19 confer certain rights on tenants. Section 7 lays down that no tenancy shall be terminated except on the grounds specified in this section. This provision of law applies to tenants-at-will also. This Act, however, does not lay down any procedure for securing eviction of tenants.

The main question that arises in these cases relates to the effect of section 7 of the 1953 Act on the mode of eviction of a tenant-at-will under sections 43 and 45 of the 1887 Act. The landlords' case is that this remedy is still available to them, but this is denied by the tenants. It is, therefore, necessary to determine this matter in these petitions.

Now, under the 1887 Act the tenancy of tenant-at-will can be terminated and an order for his eviction can be obtained without alleging or proving any ground for eviction. A landlord can enforce this right by a suit or by taking ejectment proceedings under sections 43 and 45 as indicated above. In either case the matter has to be decided by revenue Courts (vide section 77(3) of the 1887 Act). The 1953 Act, while conferring certain rights on tenants as defined in this later Act, does not lay down the mode by which this right can be enforced. The question arises as to the procedure that should be followed when rights under section 7 of the 1953 Act are being enforced. In the course of arguments it was suggested that

the rights under section 41 of the 1887 Act should be enforced by the procedure laid down in that Act, while the rights under section 7 of the 1953 Act should be enforced by a suit. There is no substance in this suggestion. It is not necessary in this judgment to consider the effect of section 7 of the 1953 Act on sections 39 and 40 of the 1887 Act and the discussion, that follows, is limited to the matter relating to tenants-at-will only. Section 41 of the 1887 Act and section 7 of the 1953 Act are obviously inconsistent and irreconcilable and the later provision is a complete substitution for the old one so far as it relates to tenants-at-will. Both these provisions have the same purpose of laying down circumstances in which a tenant-at-will can be evicted. For these reasons I am of the opinion that section 41 of the 1887 Act is impliedly repealed by section 7 of the 1953 Act so far as it relates to tenants-at-will. In this connection it must not be forgotten that the 1953 Act is a subsequent piece of legislation and its section 4 provides that this Act shall prevail notwithstanding anything inconsistent therewith contained in any other law. It follows, therefore, that the landlords can evict tenants-at-will only on satisfying the conditions laid down in section 7 of the 1953 Act. This right, to my mind, can be enforced only under the 1887 Act in view of the mandatory provision of section 77(3) of that Act which expressly excludes the determination of disputes relating to tenants of agricultural land by civil Court. In this connection it must be remembered that every statute should be regarded as a part of the whole body of system of law and it is not necessary that each statute must be a complete entity by itself. When the 1953 Act does not lay down any procedure for enforcing rights created therein, then one must look and see if there is any other statute which lays down that procedure. In the present cases, the 1887 Act is the only statute that lays

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down the procedure for enforcing the rights between the landlords and the tenants of agricultural lands. It, therefore, follows that the tenants-at-will can be evicted only by adopting the procedure laid down in the 1887 Act.

As I have already said, the 1887 Act lays down two alternative modes for evicting tenants, i.e. by suit or by adopting procedure laid down in sections 43 and 45. It is conceded in view of my above decision that suits in revenue Courts would be competent. It is, however, argued on behalf of the tenants that the enactment of section 7 of 1953 has abrogated and impliedly repealed section 45 and the relevant portion of section 43 of the 1887 Act. I am unable to see any force in this contention. Section 7 of the 1953 Act relates to rights and liabilities of landlords and tenants so far as they relate to latter's ejectment. Sections 43 and 45 of the 1887 Act, on the other hand, relate to procedure for securing eviction of the tenants. There cannot be any irreconcilable inconsistency between the two provisions as they relate to different subject-matters and have been enacted for different purposes. It may be that after the enactment of section 7 it would be more convenient and appropriate for a landlord to file a suit for ejectment but that by itself does not mean that the alternative mode has been abrogated or impliedly repealed. It is argued that under this alternative procedure no finding can at all be given on the grounds on which a landlord seeks a tenant's eviction, and, therefore, it must be deemed to have become inapplicable to such cases. This is not quite correct. Under section 45(1) of the 1887 Act the revenue officer shall cause ejectment notice to be served on the tenant if it is not open to objection on the face of it. It follows, therefore, that since the enactment of section 7 of the 1953 Act an application under

section 43 of the 1887 Act must satisfy and comply with this later section and must give grounds on which the applicant wishes to evict his tenants. This was admittedly done in the present cases. Under sub-clause (3) of section 45 of the 1887 Act, the tenant, who intends to contest his liability to ejectment, must file a suit within the prescribed time of two months. If he files the suit, then the landlord will have to prove the grounds on which he seeks eviction, otherwise the suit would be decreed and the tenant will not be ordered to be evicted. If the landlord succeeds in proving his allegations under section 7 of the 1953 Act in the suit then the tenant's suit will be dismissed and decree for ejectment will be passed as provided in sub-clause (6) of section 45 of the 1887 Act. It is wrong to suggest that in a tenant's suit the landlord will not have to prove these grounds and that the tenant must prove his non-liability to eviction. As section 7 of the 1953 Act is worded, it is always for the landlord to prove the grounds on which he seeks his tenant's eviction, whether the plaintiff is the landlord or the tenant. If no suit is filed by a tenant then sub-clause (5) of section 45 of the 1887 Act comes into operation and the revenue officer shall order the ejectment of the tenant. It is argued that under this sub-clause (5) the revenue officer is bound to issue orders of ejectment without deciding the grounds on which it is sought. This sub-clause, however, does not prevent expressly or by necessary implication the revenue officer from deciding whether the grounds specified in section 7 of the 1953 Act exist or not. It is true that there is no mention of such an enquiry in this sub-clause, but, in my opinion, that is implicit. After all the revenue officer under this sub-clause is acting as a judicial court and his procedure should be so moulded as to further and advance the object and purpose of the enactment rather than to retard it. In the absence of any

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provision, which expressly excludes such an enquiry, it should be held that this enquiry is implicit in the sub-clause. The law was stated by Byles, J., in *Cooper* v. *The Board of Works for the Wandsworth District* (1), in these words:—

> "There are numerous cases, coming down to the most recent times to the effect that when powers are conferred by the legislature which are to be judicially exercised, the person against whom they are to be exercised has a right to be heard; and that if this right be not expressly conferred by the statute, the common law will supply that omission."

This statement of law has been approved in *Vestry of St. James and St. John, Clerkenwell* v. *Feary* (2), and in *Attorney-General* v. *Hooper* (3). This statement of law has been incorporated in Craies' well-known Treatise on Statute Law and in Maxwell's Interpretation of Statutes. It follows that an enquiry in proceedings under section 45(5) of the 1887 Act must be held implicit in the section before an order for eviction is made and if that be so then it cannot be said that the procedure laid down in section 45 has become incompatible with section 7 of the 1953 Act. My conclusion, therefore, is that it is still open to landlords to seek their tenants' eviction by adopting the procedure laid down in sections 43 and 45 of the 1887 Act and the decision of the Financial Commissioner in deciding otherwise was not in accordance with law.

The landlords, however, fail on another ground. The provisions of section 45 of the 1887

(1) 32 Law. J. Rep. (N.S.) C.P. 185 at p. 188
(2) (1890) 24 Q.B.D. 703
(3) (1893) 3 Ch. D. 482

Act have not been validly observed before the Tahsildar and the Collector who passed orders of ejectment on 23rd of June, 1955, and 5th of April, 1956, respectively. The landlords in their application under section 43 of the 1887 Act gave grounds on which they sought eviction of their tenants and it was not open to objection on the face of it within section 45(1) of this Act. In response the tenants filed suits to avoid consequences of these statutory notices. On instituting these suits sub-clause (6) of section 45 of this Act became applicable to the cases. It reads—

> "45(6). If within those two months the tenant institutes a suit to contest his liability to be ejected and fails in the suit, the Court by which the suit is determined shall by its decree direct the ejectment of the tenant."

As I have already said, the suits of the tenants failed for want of sufficient court-fees. Thereupon the Assistant Collector should have by its decrees directed the ejectment of the tenants. He, however, failed to pass such decrees. The Collector, Sangrur, modifying the orders of the Assistant Collector also failed to pass decrees for ejectment. If the Assistant Collector and the Collector had directed their attention to this aspect of the matter, I have no doubt, then they would have had to comply with the provisions of section 7 of the 1953 Act before passing the decrees for ejectment. Apparently nobody noticed this defect in the orders passed by the Assistant Collector and the Collector in the suits filed by the tenants, and the landlords took proceedings under section 45(5) of the 1887 Act instead of executing decrees for ejectment as laid down in section 42 of the Act. It is obvious that after a suit has been instituted section 45(5) becomes inapplicable and the orders passed thereunder are consequently not valid.

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It is contended on landlords' behalf that as the plaints were rejected for want of sufficient court-fees, the suits in the eye of law were never instituted and therefore section 45(5) became operative as conditions laid down in section 45(6) were not satisfied. There is no force in this contention. Section 88 of the 1887 Act makes all the provisions of the Code of Civil Procedure applicable to revenue Courts. Section 26, Civil Procedure Code, lays down that a suit shall be instituted by the presentation of a plaint. When a plaint is duly instituted then it shall be registered (Order IV rule 2, C.P.C.). Thereafter defendants shall be summoned (section 27 and Order V rule 1, C.P.C.). All these steps were taken in the present cases and the suits were contested by the landlords. The suits terminated by judgments and decrees (Section 33 C.P.C.) and the orders rejecting the plaints are decrees as defined in section 2(2), Civil Procedure Code. The rejection of the plaints after contest does not obviously affect their previous valid institution. I am, therefore, of the opinion that in the present cases the suits were instituted within sub-clause (6) of section 45 and that they failed. That being so, it was not open to the revenue Courts to order ejectment on applications under section 45(5) of the 1887 Act which applies only if no suit is instituted. I, therefore, hold that in the circumstances of these cases the Assistant Collector and the Collector had no jurisdiction to pass orders of ejectment under section 45(5) of this Act.

Moreover, when the orders of ejectment were passed, no finding was given on the landlords' allegations that the tenants had not paid the rent and that they had refused to execute *kabuliyats*. Section 7 of the 1953 Act is mandatory and lays down that no tenancy shall be terminated unless grounds specified in the section are proved. It

follows that no ejectment orders could be passed till these grounds were proved. Admittedly, this has not been done in these cases. No party is entitled to claim an order under Article 226 or 227 of the Constitution as a matter of course. An order under these provisions of the Constitution may be made only to advance justice. It cannot be made on a technical ground which may have the effect to perpetuate a wrong done to the opposite party. It cannot be said that the landlords have suffered any injustice, leaving alone manifest injustice, in these cases because the Financial Commissioner set aside the orders of ejectment albeit on incorrect grounds. If I interfere in these cases on the ground that the Financial Commissioner had given wrong reasons for his decision, then I would be contravening the mandatory provisions of section 7 of the 1953 Act and would be ordering eviction without any proof that the provisions of section 7 have been complied with. I, therefore, see no reason for adopting this course. In the exercise of my discretion I refuse to interfere with the orders of the Financial Commissioner setting aside the orders of the lower Courts in the present cases although on grounds different from those given by him.

For these reasons I dismiss all these petitions. No order as to costs in these petitions.

APPELLATE CIVIL.

Before Chopra, J.

UNION OF INDIA,—*Appellant*

versus

SHRI DHARAMPAL CHOPRA,—*Respondent.*

Regular Second Appeal No. 232 of 1956.

1957

April, 29th

Constitution of India Articles 310, 311—Civillian Employees of Military Farm Department—Such persons, whether belong to a Department connected with Defence—