

his occupancy tenants for cutting down trees which had been sold by them. As it was an act done by an occupancy tenant in excess of his right, Walsh J. held that it arose out of contract and the suit was for compensation for breach of an implied contract not specifically provided for in the Limitation Act, the implied contract being not to cut down the trees. Article 49 was applied in view of the facts of that case. In *Vairayan Chettiar and another v. Avicha Chettiar and others* (1), which was a suit for compensation against a person under section 235 of the Contract Act for untruly representing himself to be the authorised agent of another and thereby inducing the plaintiff to deal with him as such agent, the Court observed:—

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“Assuming that the action may be held to be one in tort, it is certainly not for a wrong independent of contract but one connected with a contract and arising from one of the incidents of a contract.”

In this maner Article 36 was found not to apply. As the learned counsel for the appellant has not been successful in showing that the present suits were governed by Article 36, it cannot be held that they were barred by limitation even if they were not governed by Article 95.

No other point was pressed before, us, with the result that all the three appeals fail and they are dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and A. N. Grover, J.

SURJA,—Petitioner.

versus

THE FINANCIAL COMMISSIONER, PUNJAB AND
OTHERS,—Respondents.

*Punjab Security of Land Tenures Act (X of 1953)—
Section 14-A—Date for determining permissible area—
Whether the date of the application.*

1961

Dec., 18

(1) 21 I.C. 65.

Held, that the relevant period for seeing whether a land-owner is a small land-owner or not for the purposes of deciding an application under section 14-A of the Punjab Security of Land Tenures Act, 1953, is the date of the application in respect of which the permissible area has to be reckoned according to the valuation in terms of the standard acres of the land in the possession of the land-owner.

Shrimati Lal Devi v. Hardit Singh (1), overruled.

Petition under Article 226 and 227 of the Constitution of India, Praying that a writ in the nature of certiorari, mandamus or any other suitable writ, direction or order, be issued, quashing the orders of Respondent No. 1, 2 and 3, dated 2nd May, 1960, 16th August, 1960 and 6th December, 1960 and orders of respondent No. 4 dated 21st December, 1960, be restored.

G. P. JAIN, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.

ORDER.

The judgment of the court was delivered by:—

Grover, J.

GROVER, J.—This judgment will dispose of all the three petitions (Civil Writs Nos. 1889 of 1960, 486 of 1961 and 487 of 1961). The facts in Civil Writ 486 of 1961 need only be stated.

Milawa Ram, who was the landlord, filed an application under section 14-A of the Punjab Security of Land Tenures Act, 1953 (to be referred to as the Act) seeking ejection of the petitioner from land measuring 35 *kanals* and 2 *marlas* in village Bhurtana on the ground that he was a small land-owner and the tenant had under his cultivation more than 5 standard acres of land belonging to the other owners. Milawa Ram, landlord had originally been allotted 26 standard acres and 8½ units of land and according to what is stated in his petition 57 *kanals* had been acquired by him by pre-emption.

On 21st December, 1959, the Assistant Collector, Ist Grade, Hissar, dismissed the landlord's application holding that on the date of the application he held more than 30 standard acres of land and, therefore, he was a big land-owner. The landlord went up in appeal to the Collector, who allowed his appeal by his order, dated 2nd May, 1960 and directed ejectment of the tenant. The Collector held that the landlord was a small land-owner and he could maintain the application for ejectment. The tenant failed in his appeal before the Commissioner as also the revision petition which he had preferred before the Financial Commissioner. He has approached this Court under Article 226 of the Constitution for quashing the orders adverse to him.

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Now, it appears that the Collector as also the Commissioner and the Financial Commissioner followed an earlier decision reported as *Shrimati Lal Devi, v. Hardit Singh*, (1959 L.L.T. 39). There it had been held by the Financial Commissioner that the conversion of land into standard acres "must be at the time it was permanently transferred to the allottee-landowner and not subsequently". A petition under Article 226 of the Constitution had been filed in this Court challenging that decision but the same had been dismissed *in limine*, (Civil Writ No. 735 of 1959). Later on, however, in another petition (*Bhagwana v. The Financial Commissioner and another*, Civil Writ No. 1021 of 1958), which was decided on the merits by S. B. Capoor, J. on 4th September, 1959, the learned Judge after examining all the relevant provisions of the Act gave a decision which was contrary to what had been held by the Financial Commissioner in *Shrimati Lal Devi, v. Hardit Singh* (1). He expressed the view that the permissible area must be reckoned according to the valuation in terms of the standard acres of the land with the land-owner at the time he makes an application for eviction. Against the order of Capoor J., a Letters Patent appeal was preferred (L.P.A. 290 of 1959), which was dismissed *in limine* by a Bench of which my Lord the Chief Justice was a member. Leave to appeal to the Supreme Court, against the order of dismissal by the Bench was sought

(1) 1959 L.L.T. 39.

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under Article 133 of the Constitution but the leave was also not granted. It is mentioned in the order of the Commissioner himself that the aggrieved party approached the Supreme Court for special leave to appeal but even that permission was not granted. Notwithstanding all this the Commissioner chose to follow the decision of the learned Financial Commissioner in *Shrimati Lal Devi v. Hardit Singh* (1), and not the judgment of S. B. Capoor, J. which should be taken to have been upheld by the Letters Patent Bench and which became final on the point after the dismissal of the application for leave to appeal to the Supreme Court as also the application for special leave which had been filed to their Lordships. It is somewhat surprising that the Commissioner was of the view that since the writ petition filed against the decision of the Financial Commissioner in *Shrimati Lal Devi v. Hardit Singh* (1), had been dismissed *in limine* this Court had made a pronouncement on the correctness or otherwise of that decision. No appeal had been brought to this Court against that decision of the Financial Commissioner and merely because the extra-ordinary powers under Article 226 were invoked it could not possibly be held that the Financial Commissioner's view had received the imprimature of this Court. The following part of the order of the learned Financial Commissioner may be set out:—

“My attention has been drawn to Civil Writ No. 1021 of 1958, dated the 4th September, 1959, wherein the learned judge took the view that the ‘permissible area’ of a landowner must be reckoned at the time he makes an application for eviction. With the utmost deference to the learned judge, I feel, that I would be justified in adhering to my original view expressed in *Shrimati Lal Devi v. Hardit Singh*, (1), which has been upheld by a Division Bench in Civil Writ No. 735 of 1959”.

As stated before, no decision had been given by the Court in Civil Writ No. 735 of 1959 and the only view that had finally prevailed is the one expressed by S. B.

(1) 1959 L.L.T. 39.

Capoor, J. It may be pointed out that the decisions given by this Court are binding on the Commissioner and the Financial Commissioner and ought to have been followed.

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Grover, J.

The learned Additional Advocate-General, sought to assail the correctness of the view expressed by Capoor, J. but since even their Lordships of the Supreme Court have declined to grant special leave against that decision, it would not be right or proper to allow him to re-open the matter. Thus it must be held that the relevant period for seeing whether a landowner is a small landowner or not for the purposes of deciding an application under section 14-A is the date of the application in respect of which the permissible area has to be reckoned according to the valuation in terms of the standard acres of the land in the possession of the land-owner. It is common ground that all these petitions must succeed for that reason".

In the result, all these petitions are allowed and the orders made against the petitioners in all the writ petitions which regard to their eviction are hereby quashed. The petitioner shall be entitled to their costs which we assess at Rs. 75 in each case.

