five out of the seven members cannot be deemed to be valid or binding. Accordingly the writ petition is allowed and the selection of respondent No. 10 as a Professor is hereby set aside. The parties are left to bear their own costs.

(11) In view of the success of the petitioner on this primary point I would deem it unnecessary to examine the other two contentions raised on her behalf, namely, that respondent No. 10 did not fulfil the qualifications prescribed for the post and that the absence of respondent No. 8 Dr. P. P. Goel would particularly vitiate the proceedings.

K.T.S.

Before S. S. Sandhawalia C.J. and S. S. Dewan J.

MATHANA EX-SERVICEMEN COOPERATIVE TENANTS FARMING SOCIETY—*Petitioner.*

versus

STATE OF HARYANA and others—*Respondents.*

Civil Writ Petition No. 6485 *of* 1976.

July 24, 1978.

East Punjab Utilization of Lands Act (XXXVIII of 1949)—*Section 7—Collector directing dispossession of ex-servicemen from lands under section 7—Orders challenged on the ground that the land was not allotted under the Act—Supreme Court remanding the case for deciding after determining the question whether the lands were allotted under the Act—Such direction—Whether places the onus of determining the question on the Collector—Collector—Whether required to collect evidence himself unaided by the parties.*

Held, that the Supreme Court's observation that the Collector would have no jurisdiction to order dispossession of the aggrieved Ex-Servicemen Societies from the land unless he had found after the requisite investigation that the land had been leased out to them under the Act, does not necessarily suggest that the burden of proving various pleas which the questions involve had been laid on the authority itself. There is nothing in such a direction which would deviate from the ordinary rule that the burden of proving the pleas forming the subject matter of the question would lie on the party by which it

was raised. The Collector, therefore, had jurisdiction to issue notice to the societies, the object of which is to require it to take part in the proceedings proposed to be initiated by him in terms of the direction of the Supreme Court. Such a notice would in fact be in the interest of the parties themselves and provide them an adequate opportunity to produce the necessary evidence, if any, in their possession to support their claim. The Collector is not barred from inviting the parties to produce any evidence in their possession or be necessarily compelled to ferret all such evidence by himself alone unaided by them.

(Paras 10 and 12).

Case referred by Hon'ble Mr. Justice K. S. Tiwana vide his Order dated January 19, 1978 *to a Division Bench for a decision of the case on merits. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice S. S. Dewan finally decided the case on* 24*th July,* 1978.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that the records of the case be summoned and an appropriate writ, order or direction be issued, quashing the orders at Annexures P-1, P-2, P-3 and P-5, dated* 10*th June,* 1974, 23*rd October,* 1975, 12*th August,* 1976 *and* 6*th September,* 1976, *respectively of the respondents, and they be directed not to interfere with the possession of the petitioners on the lands in question and not to take any proceedings against unless they have fully complied with the directions of the Hon'ble Supreme Court in their judgment dated* 11*th April,* 1974.

It is further prayed that during the pendency of this writ petition the respondents be restrained from dispossessing the petitioners from the lands in question.

Anand Swarup, Advocate with M. L. Bansal, Advocate, *for the Petitioner.*

A. S. Nehra, Additional A. G., Haryana, H. N. Mehtani, Advocate, for Respondents Nos. 10, 11 and 12.

JUDGMENT

S. S. Dewan, J.

(1) Letters Patent Appeal No. 15 of 1977 (*The Prem Ex-Servicemen Tenants Farming Society and others* v. *Haryana State and others*) and Civil Writ Petition No. 6485 of 1976, in view of the similarity of the material facts and the questions arising therein for our determination are being disposed of together by this judgment.

(2) Letters Patent Appeal is directed against the judgment, dated December 20, 1976, delivered by Gurnam Singh J. in Civil Writ Petition No. 947 of 1975, by which he upheld, *inter alia*, the legality of the notice (Annexure P-2), dated July 5, 1974, issued to the petitioner by the Collector, Kaithal. The learned Judge found that the notices were not contrary to the directions of the Hon'ble Supreme Court contained in its judgment in the case of *M/s. Prem Ex-Servicemen Co-operative Tenants' Farming Society Ltd.*, v. *The State of Haryana and others*, reported as (1). Civil Writ Petition has been placed before us for disposal on reference by K. S. Tiwana J., in view of the conflict of opinion on the legality of the notice expressed in the two judgments, one under appeal and another, dated May 12, 1976, by M. R. Sharma J., in the case of *The Mohanpur Ex-Servicemen Co-operative Tenants Farming Society Ltd.*, v. *The State of Haryana and others* reported as (2), whereby the learned judge quashed the notice on the ground that it did not strictly comply with the observations of the Supreme Court made in the aforesaid judgment.

(3) It will be convenient at this stage to state in brief the facts of the case decided by the Supreme Court and the observations and directions given by it in its judgment.

(4) On the assumption that the provisions of the East Punjab Utilization of Lands Act, 1949, (hereinafter referred to as the Act) applied, the Collector Kaithal issued orders to a bunch of Ex-Servicemen Co-operative Tenants Farming Societies, directing their dispossession from the lands and their delivery to the rightful owners on the ground that the period of their leases had expired. The Societies including the present appellants and the writ petitioner approached the Hon'ble Supreme Court by way of appeals and writ petitions and challenged the legality of the orders on the ground that the lands had not been allotted to them under the said Act. No *pattas* or lease deeds were forthcoming. The respondents-State and the landowners contended that there was other ample documentary evidence to establish that the lands had been leased out to the Societies under the Act. The Supreme Court held that eviction of the Societies could not be ordered unless it was found after necessary investigation that the lands had been allotted to them under the Act.

(1) A.I.R. 1974 S.C. 1121.
(2) 1976 P.L.J. 451.

The Supreme Court, therefore, quashed the orders made by the Collector and remanded all the cases to the Collector for decision with these observations:—

> "After having been taken through the provisions of the Act, we find that the provisions for eviction could only apply to cases where it is clear or there is no dispute that the person to be evicted was a lessee under section 5 of the Act. In the instant case, the learned counsel for the alleged lessees points out that there were a number of enactments under which the land could be given. They were said to be: Colonization of Government Lands Act, 1912; the East Punjab Displaced Persons Resettlement Act, 1949; East Punjab Reclamation of Land Act, 1951 and the Security of Land Tenures Act, 1953. Certain rules were also said to have been made in 1897 for utilization of waste land in Punjab. It was not clear under which provision the land was allotted to the alleged lessees. Hence, at the very threshold, the power of the Collector to proceed under the Act is challenged. It is true that the Act does not give power to the Collector to adjudicate on questions of right and title where these properly and really arise. Nevertheless, the Collector, when proceeding to take steps under the Act, must determine the source and extent of his power and jurisdiction, where these are questioned, so as to decide whether the Act relied upon by a party before him could be applied at all. This is a question on which there are conflicting assertions and pieces of evidence which seem difficult to reconcile with each other. Hence, we think that these are fit cases in which the Collector may himself go into the following questions before passing any further orders:
>
> 1. Was the possession of any of the lands in dispute taken by the State Government under the Utilization of Lands Act and *Pattas* duly executed under Section 5 of the Act in favour of the alleged lessees ?
>
> 2. Were any proceedings for awarding compensation under Section 4 of the Act taken in respect of the land alleged to have been leased, and, if so, on what basis

were the persons dispossessed compensated? In other words, are there grounds to believe that the persons to whom the lands were directed to be handed over were no longer owners ?

3. If no legally valid leases were executed in favour of the alleged lessees, what could be their legal status and rights by reason of long possession ?

4. What was the nature of the claims to any land put forward by the *Gaon Panchayats* ?

5. Is this a case in which the Collector can interfere or pass any order under any provision of law or should the matter be left to be decided between the alleged lessees, the alleged private owners and the *Panchayats* by such other legal proceedings as may be open to them for the purpose of getting their claims adjudicated upon ?"

(5) In view of the arguments advanced before us by Mr. Anand Swaroop, learned counsel for the petitioner, which were adopted by Mr. Kuldip Singh, who appeared on behalf of the appellants, it is necessary to refer to the relevant contents of the notices issued by the Collector, which were assailed. Notice, dated June 10, 1974, issued to the petitioner, copy of which is Annexure P-1 on the record, runs thus:—

"The petitioner has filed a petition against you under the above title in connection with which you are directed to appear before me on 20th June, 1974, at 7 a.m. and produce your reply alongwith all the documents in proof of your reply. You are further informed that in case you fail to attend this office on the above day, *ex-parte* proceedings will be taken against you and case will be decided accordnigly."

The notice, dated July 5, 1974, issued in the case of the appellants, copy of which has been produced as Annexre "P-2", is as under:—

"By means of this notice (in duplicate) you are hereby informed that you should appear before me personally or through an Advocate at the Rest House, Pehowa, on 26th July,

1974 for furnishing evidence, documents or any other material and submission in support of your contentions and proof in relation to and having bearing on the aforesaid questions. In the event of your non-appearance it will be understood that you have no submissions to make nor you wish to furnish any evidence and an *ex-parte* decision would be taken as regards the various questions referred to above and consequential orders passed".

(6) Before dealing with the arguments urged before us by the learned counsel it may be mentioned that in response to the notices issued to them, the appellants and the petitioner appeared before the Collector and contested the claims of the owners that their lands had been taken over by the Collector under the Act and thereafter leased out to them. They asserted that they were in possession of the lands by virtue of allotments made in favour of the members constituting the Societies by the Government of India under a Scheme framed by the Ministry of Defence with a view to rehabilitate the Ex-Servicemen. The Collector in each case found the assertion to be baseless and by a reasoned order rejected it, holding that they were in possession of the lands by virtue of the lease granted to them under the provisions of the Act.

(7) Arguments of the learned counsel may now be noticed. It was contended that the notice such as was issued to the petitioner, could not be competently issued by the Collector until in accordance with the observations and directions contained in the judgment of the Supreme Court extracted by us above, he had himself in the first instance gone into the questions formulated by the Supreme Court and found that the land in dispute had been leased out to the petitioner under the provisions of the Act. The learned counsel emphasised that in view of what had been said by the Supreme Court in its judgment, the Collector was required to collect evidence on his own, which would show that the lands had been leased out to the petitioner under the Act. The Collector, he submitted, had not done so before he issued the notice. By the notice issued, he further submitted, the Collector had placed the onus of proof on the petitioner in respect of the questions formulated by the Supreme Court, which by virtue of the judgment of the Supreme Court, lay upon him. Consequently, he contended that the notice was in violation of the directions of the Supreme Court and without jurisdiction; was

liable to be quashed along with the proceedings taken upon it and the orders made by the Collector, the appellate and the revisional authorities. In support of this contention, learned counsel also placed reliance on the judgment of Sharma J., reported as (2 Supra). In this case, the learned Judge quashed an identical notice issued by the Collector. After referring to the judgment of the Supreme Court and reproducing the questions formulated by it, the learned Judge assigned the following reasons for setting aside the notice:—

> "It is apparent that these issues have been worded in such a manner that the burden of establishing the pleas raised therein has been placed on the Collector himself. He is, of course, to decide these facts with a view to determine whether he has the jurisdiction to act under the Act. The wording of the notice served upon the petitioner-Society shows, that the Collector has assumed the fact that he has jurisdiction to decide the matter unless the petitioner-Society produces sufficient evidence before him to prove that he had no jurisdiction to take action in the matter. The proper manner in which the Collector should have acted in this case is that he should have collected all the evidence in support of the plea that the land had been allotted to the petitioner-Society under the Act and then he should have called upon he said Society to explain that evidence. If the petitioner-Society wishes to cross-examine any witness, upon whose statement the Collector relies, or wishes to produce any witness in defence the Collector has to accede to such a request before deciding that the land had been leased out to the petitioner-Society under the Act. It is only after such a decision that a notice under section 7 of the Act can be issued against the petitioner-Society".

(8) There can be no doubt that the judgment delivered by Sharma J., fully helps the petitioner.

(9) However, as stands noticed at the very outset there is patent conflict of opinion on the point which in terms has been noticed by K. S. Tiwana J., in making the reference and directing that the writ petition should be considered along with the letters patent appeal. The rival views expressed in the *Mohanpur Ex-Servicemen Co-operative Tenants Farming Society Ltd.* v. *The State of Haryana and*

others, (2 supra) and that in the *Prem Ex-Servicemen Co-operative Tenants' Farming Society Ltd., Bakhli and others* v. *The State of Haryana and others* (3), therefore, vie for acceptance.

(10) To recall, the Supreme Court had observed that the Collector would have no jurisdiction to order dispossession of the aggrieved Ex-Servicemen Societies from the land unless he had found after requisite investigation that the land had been leased out to them under the Act. No such finding having been recorded by the Collector, the Supreme Court, therefore, quashed the orders directing dispossession. For lack of material on the record to enable it to find for itself, the Supreme Court formulated the questions arising out of the conflicting claims of the parties and directed the Collector to settle them with a view to ultimately decide whether or not the land had been leased out under the Act. As we read that judgment, the Court did not either place the onus of proof on the Collector himself in respect of the facts which the question involved nor did it in terms direct that the Collector should himself collect evidence unaided by the parties. Learned counsel have been wholly unable to point out to any such necessary direction either express or implied in the judgment of the Supreme Court or to anything said therein relating to the question of onus.

(11) Coming now to the judgment of Sharma J., in *Mohanpur Ex-servicemen Cooperative Tenants Farming Society's* case it would appear from the operative part thereof reproduced above that the learned Judge expressed the view that the manner in which the issues (apparently meaning thereby the questions) had been worded in fact placed the burden of establishing the pleas raised therein on the Collector himself. In effect, therefore, it was said as if the onus of proving the same lay upon him alone. On this footing the learned Judge proceeded further to set down the procedure for the Collector to be followed in the enquiry which alone in his view would accord with the obligation to discharge this onus. The notice issued in that case which is similarly worded as the one issued in the present writ petition was interpreted by the learned Judge to mean that the Collector had thereby assumed jurisdiction to decide the matter.

(12) With great respect to the learned Judge we are unable to agree with the view of the matter taken by him. In our view the

(3) 1977 P.L.J. 211.

wording of the questions formulated by the Supreme Court by itself does not necessarily suggest that the burden of proving the various pleas which the questions involve had been laid on the Collector. Even otherwise we think it rather unusual (though perhaps not impossible) that the onus of proof should be laid on the authority itself. We do not find anything in the language of the questions formulated by their Lordships of the Supreme Court which would deviate from the ordinary rule that the burden of proving the pleas forming the subject-matter of the question would lie on the party by which it was raised. If this be the correct reading of the questions—and we feel no doubt it is so—it is unnecessary to proceed further to examine the propriety of the procedure which the learned Judge desired the Collector to adhere to for the purpose of enquiry into the question. Therefore, the criticism levelled against the notice issued in that case was perhaps uncalled for. The Collector had jurisdiction to issue the notice to the petitioner the object of which appears no other than to require it to take part in the proceedings proposed to be initiated by him in terms of the judgment of the Supreme Court with a view to decide the question formulated by it and to decide whether or not the land had been leased out to the petitioner under the Act and thereafter take appropriate action. Such a notice would in fact be in the interest of the parties themselves and provide them an adequate opportunity to produce the necessary evidence if any in their possession to support the claim of either. We are unable to see as to how the Collector should be barred from inviting the parties to produce any evidence in their possession or be necessarily compelled to ferret all such evidence by himself alone unaided by them.

(13) Even if it be assumed that the observations of the Supreme Court that the Collector may himself go into the question which may enable him to collect the material and evidence therefor it would not mean that he could not seek the assistance of one or other of the parties in collecting the necessary information or evidence. Nor would it prevent him from inviting or requiring the parties to appear before him for furnishing such material as may be in their possession. The wording of the notice in the present as also in the previous cases cannot possibly raise any inference that the Collector had placed any onus of proof merely by issuance of the same on either of the parties.

(14) For the aforesaid reasons we are compelled to conclude with great respect that the judgment of Sharma J. in *Mohanpur*

Ex-servicemen Co-operative Tenants Farming Society does not proceed on a correct assumption and has, therefore, to be overruled. We agree with the reasoning of Gurnam Singh J. in paragraph 18 of the report in *Prem Ex-servicemen Co-operative Tenants' Farming Society Ltd.'s* case and affirm the same.

(15) Consequently, we are satisfied that the notice does not in any way violate the observations in the judgment of the Supreme Court. It was issued plainly to enable the petitioner to take part in the proceedings which the Collector was required to take in order to decide the questions formulated by their Lordships. The notice is in keeping with the judgment of the Supreme Court and is not questionable for any other reasons advanced by the learned counsel.

(16) No other point was urged by the learned counsel for the parties.

(17) In the result we find no substance in the writ petition as well in the appeal. Both are, therefore, dismissed but without any order as to costs.

S. S. Sandhawalia, C.J.—I agree.

K.T.S.

FULL BENCH

Before Prem Chand Jain, Surinder Singh and S. P. Goyal, JJ.

SUNDER SINGH and another—*Petitioners.*

versus

BEAS CONSTRUCTION BOARD and others —*Respondents.*

Civil Writ Petition No. 3326 *of* 1977

January 10, 1978.

Industrial Disputes Act (XIV of 1947)—*Sections* 25 F *and* 25 *FFF—Services of workmen dispensed with on part completion of work—Section* 25 *FFF—Whether applicable—Cases falling under Section* 25 *FFF—Payment of retrenchment compensation along with the discharge notice—Whether a condition precedent.*