issued receipts in favour of Moga Transport Company Private Ltd., Moga, though they did not represent the correct state of affairs, because nothing was paid to them thereunder. On the other hand, the petitioner-company has mentioned in minute details the dates of payments and the actual amounts paid on those dates to the two workmen by the Moga Transport Company. In this state of the pleadings, it would be in the interests of justice that before the back wages were awarded to the workmen, these wages being admittedly given in order to compensate them for the loss of income during their retrenchment period, an enquiry should be made into this matter by the Tribunal to find out if they were actually employed with those Companies or anywhere else during the relevant period and had in fact received any wages. It is only then that it can be determined as to how much loss of income was suffered by the workmen during the retrenchment period, for which they have to be compensated. The amount of compensation, if any, to be paid in the form of the back wages has, of course to be determined by the Tribunal after giving the parties proper opportunity to lead evidence regarding this matter.

In view of what I have said above, I would uphold the award of respondent No. 2 to the effect that the retrenchment of the two workmen was bad in law and the order re-instating them was valid. With regard to the payment of the back wages, however, the order of the Tribunal is set aside and he is directed to re-determine this matter in the light of the observations made above. In the circumstances of this case, however, I leave the parties to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

GURBACHAN SINGH AND ANOTHER,—*Petitioners*

versus

FINANCIAL COMMISSIONER AND OTHERS,—*Respondents*

Civil Writ No. 1620 of 1964.

May 18, 1967.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 7-A (1)—Land-owner holding more than 30 standard acres at the commencement of the Act, but holding 30 standard acres or less at the time of making application for

ejectment against a tenant—Whether entitled to eject the tenant—'Land-owner' as used in S. 7A (1)(b)—Whether includes a mortgagee.

Held, that if the landowner owned more than 30 standard acres on the date of the commencement of the Pepsu Tenancy and Agricultural Lands Act, 1955, he is entitled to eject his tenant if the holding owned by him at the time of making the application for ejectment is 30 standard acres or less. The opening words of section 7-A (1) restrict the application of the section's two clauses to only those tenancies which subsisted on the date of coming into force of the Act. Once the tenancy is found to have subsisted on the said date, the right of the landowner to apply under section 7-A(1) accrues to him if he fulfils the other conditions laid down in the section which are wholly independent of the condition precedent for the application of the section as such. The absence of such a restrictive clause in section 7(1) of the Act does not make any difference. The only effect of the distinction is that a tenancy can be sought to be terminated under any of the various clauses enumerated in sub-section (1) of section 7 of the Act irrespective of the fact that the tenancy subsisted on the date of coming into force of the Act or not. On the other hand, no small landowner can claim eviction of a tenant under section 7-A (1)(b) of the Act if the tenant whom he seeks to evict was not on the land as a tenant on the said crucial date, i.e., on the date of coming into force of the Act.

Held, that the word 'landowner' contained in section 7-A(1)(b) of the Act, by virtue of definition in section 2(f) and explanation added thereto, does not include within its purview a mortgagee with possession. The expression 'land-owner' simpliciter wherever used in the Act must be deemed to include a mortg-agee with possession. If and when, however, the expression "landowner" is qualified by some other word, it has to be read subject to that qualification. In section 7-A (1)(b) the expression used is "land owner owns". The obvious intention of the Legislature in restricting the provisions of clause (b) of section 7 of the Act by adding 'owns' after the word "landowner" in that clause is that out of the general class of landowners as defined in the Act, only those who own 30 standard acres or less on the relevant date are entitled to invoke the assistance of that provision. If that were not so, the Legislature would have used the word "held, holds or has" in place of the word "owns".

Petition under Articles 226/227 of the Constitution of India, praying that a writ of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the order of Respondent No.* 1, *dated 19th July,* 1964.

A. S. Bains and Tirath Singh, Advocates, for the Petitioners.

D. S. Nehra, Advocate, for Respondents. 2 to 4.

ORDER

NARULA, J.—This petition under Articles 226 and 227 of the Constitution raises the question of interpretation and true scope of section 7-A(1)(b) of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter called the Act), The said provision reads as follows:—

"7-A(i) Subject to the provisions of sub-sections (2) and (3), tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, may be terminated on the following grounds in addition to the grounds specified in section 7, namely:—

(a) * * * * * *

(b) That the landowner owned thirty standard acres or less of land and the land falls within his permissible limit;

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

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

(ii) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standard acres,

until he is allotted by the State Government alternative land of equivalent value in standard acres."

Section 7(1) of the Act states that no tenancy is liable to be terminated except in accordance with the provisions of the Act or except on any of the grounds enumerated in that sub-section.

The Assistant Collector, First Grade, Barnala, dismissed the petition of respondents Nos. 2 to 4 under section 7-A of the Act for the ejectment of the petitioners. Respondents 2 to 4 lost their appeal before the Collector as well as their further revision to the Commissioner, Patiala by their respective orders dated December 31, 1962 and April 30, 1963. The respondents, however, succeeded at the second revisional stage when Mr. A. L. Fletcher, Financial Commissioner, Revenue, Punjab, reversed the finding of the authorities

below by his order dated July 19, 1964, accepted the petition of the contesting respondents and directed the ejectment of the petitioners.

It is not disputed before me that the petitioners were the tenants of the land in quesion at the time of the commencement of the Act. The dispute relates to the holding of the contesting respondents. Firstly, it seems to be assumed or admitted that respondents Nos. 2 to 4 owned more than 30 standard acres at the time of coming into force of the Act, but the land owned by them had been reduced to 30 standard acres or less at the time they filed the petition for ejectment.

The only other fact relevant for deciding this case is that the contesting respondents are the mortgagees of the land from which they seek to eject the petitioners, but the lands owned by them did not exceed 30 standard acres. It is also not disputed that if the lands held by the contesting respondents as mortgagees are added to the holding owned by them, it would exceed 30 standard acres. It is in this context that the Financial Commissioner (Rev.) decided by his impugned order that the instant case falls within the purview of section 7-A(1)(b) on the ground that so far as a landowner is concerned what has to be seen is the area owned by him on the date he applies for ejectment of a tenant under that provision and not the area owned by him on the date of coming into force of the Act, and on the further ground that the maximum holding of a landowner which entitles him to make an application for ejectment under the said provision is restricted to the land actually owned by him and does not extend to the land of which he is merely the statutory landowner.

Mr. Ajit Singh, the learned counsel for the petitioners, has questioned the correctness of both the above said findings of the Financial Commissioner. He has firstly argued that in contra-distinction to section 7(1) of the Act where the subsistence of the tenancy at the time of commencement of the Act is not relevant, the crucial time in respect of which the application of section 7-A(1)(b) is to be determined is the date on which the Act came into force. The argument is that if the landowner owned more than 30 standard acres on the date of the commencement of the Act, he is not entitled to invoke the above said provision for the ejectment of his tenant even if the holding owned by him at the time of making the application for ejectment is 30 standard acres or less. I am unable to agree with this argument. The opening words of section

7A(1) restrict the application of the section's two clauses to only those tenancies which subsisted on the date of coming into force of the Act. Once the tenancy is found to have subsisted on the said date, the right of the landowner to apply under section 7-A(1) accrues to him if he fulfils the other conditions laid down in the section which are wholly independent of the condition precedent for the application of the section as such. The absence of such a restrictive clause in section 7(1) of the Act does not in my opinion make any difference. The only effect of the distinction is that a tenancy can be sought to be terminated under any of the various clauses enumerated in sub-section (1) of section 7 of the Act irrespective of the fact that the tenancy subsisted on the date of coming into force of the Act or not. On the other hand, no small landowner can claim eviction under section 7-A(1)(b) of the Act if the tenant whom he seeks to evict was not on the land as a tenant on the said crucial date, i.e., on the date of coming into force of the Act.

Nor do I find any force in the second contention of Mr. Ajit Singh. He has argued that the extended statutory definition of "landowner" contained in section 2(f) of the Act by virtue of the explanation added thereto, includes within its purview a mortagagee with possession. The said definition and the explanation thereto are in the following terms:—

> "2. In this Act, unless the context otherwise requires,—
>
> (f) 'landowner' has the meaning assigned to it in the Punjab Land Revenue Act, 1887 (Punjab Act XVII of 1887), and includes an allottee;
>
> *Explanation.*—In respect of land mortgaged with possession, the mortgagee shall be deemed to be the landowner."

There is no doubt that the expression "land-owner" simpliciter wherever used in the Act must be deemed to include a mortgagee with possession. If and when, however, the expression "landowner" is qualified by some other word, it has to be read subject to that qualification. In section 7-A(1)(b) the expression used is "land-owner owns". The obvious intention of the legislature in restricting the provisions of clause (b) of section 7 of the Act by adding "owns" after the word "landowner" in that clause is that out of the general class of landowners as defined in the Act, only those who own 30 standard acres or less on the relevant date are entitled

to invoke the assistance of that provision. If that were not so, the legislature would have used the word "held, holds or has" in place of the word "owns". The counsel has referred to my judgment in *Natha Singh and others* v. *The Financial Commissioner, Revenue Punjab* (1), wherein it was held by me that expression "landowner owning land" in sub-section (1) of section 5 of the Pepsu Tenancy and Agricultural Lands Act is used only to denote that class of persons who are entitled to select land for personal cultivation, and that the term "landowner" has to be given the extended meaning contained in section 2(f) of the Act. I fail to understand how that judgment can help the petitioners in this case as the phraseology of sub-section (1) of section 5 is entirely different from the expression used in clause (b) of Section 7-A(1).

The only other point which has been mentioned in the writ petition but has not been seriously pressed by the learned counsel for the petitioners relates to the jurisdiction of the Financial Commissioner to entertain the revision petition. I think Mr. Ajit Singh has rightly abstained from pressing this point. It is obvious that in view of section 39(3) of the Pepsu Tenancy and Agricultural Lands Act, 1955 read with section 84 of the Punjab Tenancy Act, the Financial Commissioner did have jurisdiction to revise the order.

No other point has been argued in this case.

For the foregoing reasons, this writ petition fails and is dismissed, but with no order as to costs.

R. N. M.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

BADAN SINGH,—*Petitioner*

versus

THE STATE AND OTHERS,—*Respondents*

Civil Writ No. 2644 of 1964.

May 19, 1967.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 26—Mortgagee of a right-holder—Whether entitled to interfere in the allotment of taks as between the right-holders.

(1) 1966 Revenue Rulings L.L.T. 207.