(4) that the mere intimation of some outstandings either orally or by a written communication without mentioning the amount due and without requiring its payment does not satisfy the requirements of a "special demand" envisaged by rule 7(g).

For the foregoing reasons, this writ petition is allowed and the impugned orders of respondents 3 and 4 (Annexures 'C' and 'B' respectively) are set aside and quashed. I, however, make no order as to costs.

At this stage Mr. C. L. Lakhanpal, learned counsel for the petitioner, prays for a direction about telegraphic intimation of this order being sent to the Deputy Commissioner, Ludhiana and the Sub-Divisional Officer, Jagraon. Following the precedent of the case *Babu Ram* v. *The State of Punjab and others* (3), decided by Mahajan, J., I allow this request and direct that a telegraphic intimation of the acceptance of this writ petition and the consequential acceptance of the nomination papers of Duni Chand, petitioner, be sent to the Deputy Commissioner, Ludhiana and the Sub-Divisional Officer, Jagraon, at the petitioner's cost.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

AMIN LAL AND OTHERS,—*Petitioners*

versus

A. L. FLETCHER AND ANOTHER,—*Respondents*

Civil Writ No. 2854 of 1965

October 4, 1967

Punjab Security of Land Tenures Act (X of 1953)—Ss. 18 and 24—Revisional powers of Financial Commissioner—Scope of—Appeal—Variation in order by first appellate Court—Appeal by party in whose favour variation is made—Whether maintainable—Tenant against whom order of ejectment is passed before decision of his application for purchase under section 18—Whether can purchase land under his tenancy.

Held, that the scope of the revisional jurisdiction of a Financial Commissioner under section 24 of the Punjab Security of Land Tenures Act, 1953, is in no way wider than that of the High Court under section 115 of the Code of Civil Procedure, 1908.

Held, that the Financial Commissioner has no jurisdiction as a revisional authority to interfere with pure findings of fact on which the order of ejectment of the tenant had been based by the Collector and upheld by the Commissioner. The revisional jurisdiction of the Financial Commissioner is limited and is not unfettered.

Held, that the right conferred by clause (b) of section 80 of the Punjab Tenancy Act on a party aggrieved by any portion of an appellate order made in the first appeal is not taken away by the second proviso to that section unless the order passed by the Revenue Court in the first instance has been confirmed *in toto by* the order of the first appellate Court. In case of any variation in the order of the Court of first instance, the proviso has no application and the right conferred by clause (b) of the purview subsists unaffected. The right would not be taken away by the above-said proviso irrespective of whether the variation made by the first appellate Officer or Court is in favour of the party intending to prefer the second appeal or against the said party.

Held, that if the application of the tenant for purchase is granted before the order of eviction is passed, and the tenant makes payment of first instalment, he ceases to be a tenant and no question of his eviction can arise. If, on the other hand, his tenancy is brought to an end by an order of ejectment, his status as a tenant which is the very basis of an application under section 18 is lost, and he cannot then claim to purchase the land.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the order of the Financial Commissioner, annexure 'D', dated* 11*th September,* 1965.

R. S. Mittal, Advocate, for the Petitioners.

D. N. Aggarwal, Senior Advocate, with B. N. Aggarwal, Advocate, for Respondent No. 2 only.

Order

Narula, J.—This judgment will dispose of three connected writ petitions, i.e. C.W. 2854 and 2855 of 1965, as well as C.W. 1731 of

1966. These petitions are directed against different parts of one and the same order passed by Shri A. L. Fletcher, Financial Commissioner, Punjab, on September 11, 1965. The facts giving rise to the filing of these writ petitions may first be noticed.

Agricultural land measuring about 534 *kanals* and 14 *marlas* was owned by one Rajmal. Ripu (Roopu), who is petitioner in C.W. 1731 of 1966 and, who is a respondent in the other two petitions, was a tenant in cultivating possession under Rajmal. In July, 1956, Amin Lal and seven others (petitioners in C.W. 2854 and C.W. 2855 of 1965) obtained the above-mentioned land from Rajmal by exchange. Ripu (hereinafter referred to as the tenant) filed an application under Section 14-A (iii) of the Punjab Security of Land Tenures Act, 1953 (Punjab Act X of 1953) (hereinafter called the Act) on May 16, 1961, complaining of the landlord's refusal to accept the rent due from him. The application was "filed" on November 27, 1961. In the meantime, on June 6, 1961 (the date is taken from paragraph 4 of the writ petition which has not been denied) Amin Lal and seven others (to whom I will refer in this judgment as the landowners) submitted an application under section 14-A (i) read with section 9(1)(ii) of the Act, for the ejectment of the tenant, on the ground that the tenant had failed to pay rent regularly without sufficient cause. On May 14, 1962, the tenant made an application, dated March 2, 1962; under section 18 of the Act, claiming that the landowners were not small landowners and that the tenant had been in continuous occupation of 68 Kanals and 8 Marlas of land comprised in his tenancy for more than six years. It may be noticed at this very stage, that neither the landowners joined with them in their petition for ejectment, their co-owner Harjas or his heir, nor the tenant impleaded the heir of Harjas as a respondent in his application under section 18 of the Act.

On October 15, 1962, the claim of the landowners for *Batai* from Kharif 1959 to Rabi 1961, was decreed in their favour. On October 29, 1962, the Assistant Collector First Grade declared Rajmal, the predecessor-in-interest of the landowners as a small landowner and consequently rejectd the application of the tenant under section 18 of the Act as such an application could lie only against a big landowner. By a separate order of the same date (Annexure 'A'), the application of the landowners for ejectment of the tenant was also dismissed. The appeal of the landowners against the order of dismissal of their application for ejectment (Annexure 'A') was

accepted by the order of the Collector, dated August 16, 1963 (Annexure 'B') and the ejectment of the tenant was ordered under section 14-A(i) read with section 9(1)(ii) of the Act on the ground that the tenant had failed to pay rent regularly to the landowners without sufficient cause. The same Collector, by his order, dated September 6, 1963, held Rajmal (who owned the land in question on April 15, 1953, the date of coming into force of the Act) as a big landowner. On that basis the Collector allowed the application of the tenant under section 18 of the Act, in so far as it concerned an area of 28 Kanals out of the total land comprised in Ripu's tenancy on the finding that the tenant had been in continuous occupation of only that much area for a minimum period of six years. Both sides preferred second appeals against the above-said order of the Collector, dated September 6, 1963. The landowners claimed that Rajmal was a small landowner and the application of the tenant under section 18 was liable to be dismissed. It is said that the landowners also claimed that ejectment of the tenant having been ordered on August 16, 1963, the question of the tenant being permitted to purchase the land after that day, could not arise as he had ceased to be a tenant. On the other hand, the claim of the tenant in the appeal filed by him was that he was entitled to purchase the entire area of his tenancy and not only 28 Kanals to which he had been found to be entitled by the Collector. In the tenant's appeal, he for the first time, impleaded one Jeo, the legal representative of Harjas, as a respondent. By order, dated January 22, 1964, the Additional Commissioner, Ambala (the second Appellate Authority) upheld the Collector's order, dated August 16, 1963 (Annexure 'B') and dismissed the tenant's appeal against the same. The two appeals preferred against the Collector's order, dated September 6, 1963, were disposed of by two separate orders of the Additional Commissioner, dated January 22, 1964. The appeal of the landowners was dismissed on the ground that they had not impleaded Jeo, legal representative of Harjas in their appeal though she was a party to the order appealed against. The tenant's appeal was dismissed on the solitary ground that no second appeal against the Collector's first appellate order was competent and the Additional Commissioner was not prepared to treat the appeal as a petition for revision. Against the above-mentioned judgment of the Additional Commissioner, dated January 22, 1964, three separate revision petitions were filed. Two of these were filed by the tenant. The tenant's revision petition No. 623 was directed against the dismissal of his appeal by the Additional Commissioner, against the order of ejectment, dated

August 16, 1963. His second petition (R.O.R. No. 621) was against the dismissal of his appeal by the Additional Commissioner on January 22 1963, relating to his claim to acquire by purchase even the remaining area under his tenancy beyond the 28 kanals allowed in his favour. Revision petition No. 622 was filed by the landowners against the Additional Commissioner's order, dated January 22. 1964, dismissing their appeal against the order of the Collector, dated September 6, 1963, on the solitary ground that the landowners had faild to implead Jeo, as a respondent in the appeal.

Shri A. L. Fletcher, the learned Financial Commissioner, heard all the three revision petitions together on May 4, 1965 and reserved judgment therein. The impugned order was pronounced by the Financial Commissioner about four months later, i.e., on September 11, 1965. He dismissed the tenant's revision petition No. 621 by upholding the finding of the Additional Commissioner to the effect that the tenant's second appeal was misconceived and did not lie. The tenant has filed C.W. 1731 of 1966, against that part of the order (paragraph 5 of the impugned order). The landowners' revision petition (No. 622) was likewise summarily rejected by the Financial Commissioner by upholding the finding of the Commissioner to the effect that the failure of the landowners to implead Jeo, a necessary party to the second appeal, was a good ground for the rejection of their appeal. The landowners have filed C.W. 2855 of 1965 against that part of the Financial Commissioner's order (paragraph 6 of the impugned order, Annexure 'D'). The tenant's revision petition against the order of his ejectment (Revision No. 623) was allowed by the Financial Commissioner by reversing the decision of the Commissioner on the grounds mentioned in the Assistant Collector's order without making any reference to the arguments which had found favour with the Collector. Civil Writ No. 2854 of 1965 has been filed by the landowners against that part of the impugned order (paragraph 7 of Annexure 'D').

Mr. R. S. Mittal, the learned counsel for the landowners submitted that in so far as C.W. No. 2854 of 1965 is concerned, the main ground on which he claims to have the impugned order set-aside is that the Financial Commissioner had no jurisdiction to re-appraise the evidence so as to interfere in a pure finding of fact recorded by the Collector and the Commissioner. According to Mr. Mittal, the Financial Commissioner appears to have seen only the Additional Commissioner's order and does not appear to have even

perused the order of the Collector at the time of writing his judgment. The submission of the counsel was that the Financial Commissioner could not independently come to a finding different from the finding of fact which had been recorded by the Collector and the Commissioner about the tenant having been irregular in payment of rent without sufficient cause.

The Financial Commissioner derives his revisional authority from section 24 of the Act, which takes us back to the scope of revision under section 84 of the Punjab Tenancy Act, 1887 (Act XVI of 1887). Sub-section (5) of section 84 of the last-mentioned Act lays down that if, after examining the record of a case, the Financial Commissioner is of the opinion that it is expedient to interfere with the proceedings or the order or decree "on any ground on which the High Court in the exercise of its revisional jurisdiction may under the law for the time being in force, interfere with the proceedings or an order or decree of a Civil Court", the Financial Commissioner would fix a day for hearing the case and after hearing the parties concerned, pass such orders as he thinks fit. From a bare reading of section 84(5) of the Punjab Tenancy Act, it is apparent that the scope of the revisional jurisdiction of a Financial Commissioner under section 24 of the Act is in no way wider than that of the High Court under section 115 of the Code of Civil Procedure. Interference in a petition in revision under Section 115 of the Code of Civil Procedure is authorized only, if the subordinate Court appears:—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

Mr. Mittal has then referred to the judgment of the Supreme Court in *Keshardeo* vs. *Radha Kishen* (1), on the basis of the ratio of that judgment submitted that the words "illegally" and "material irregularity" do not cover either errors of fact or law and that these expressions do not refer to the decision arrived at, but to the manner in which it is reached. The Supreme Court has held in the above mentioned case that the errors contemplated by clause (c) of section 115 of the Code relate to material defects of procedure

(1) A.I.R. 1953 S.C. 23.

and not to errors of either law or fact after the formalities, which the law prescribes, have been complied with. Where the High Court had reversed in exercise of its powers under section 115 of the Code, an order of a subordinate Judge, which was within the jurisdiction of the subordinate Judge and it was found that the subordinate Judge had neither acted in excess of his jurisdiction nor he assumed jurisdiction which he did not possess and that no material irregularity or the breach of procedure had been committed, the Supreme Court held that the order of the High Court was without jurisdiction. The only other argument advanced by Mr. Mittal in Civil Writ No. 2854 of 1965 is that error is apparent on the face of Mr. Fletcher's order in so far as it is obvious from a mere reading of the order that the learned Financial Commissioner had not at all seen the original order of the Collector directing the tenant's ejectment, which was based on sound reasoning and that the Financial Commissioner was probably not aware of it as he dealt with and quoted from the order of the Additional Commissioner alone. Counsel also added that the question of consideration of the tenant's application for purchase under section 18 did not arise after August 16, 1963, when his ejectment was once ordered. Mr. Mittal further attempted to show that even on merits, the order of the Financial Commissioner was apparently erroneous in law and the order of the Collector and the Additional Commissioner directing the ejectment of the tenant was correct according to the law laid down by the Supreme Court in *Kapur Chand* v. *B. S. Grewal* (2).

In Civil Writ No. 2855 of 1965, the submission of Mr. Mittal was that Jeo not having been impleaded by the tenant in the original proceedings before the Assistant Collector, she should not be held to have become a necessary party merely because the tenant has impleaded her as a party at the first appellate stage.

In the alternative, Mr. Mittal argued that if the plea of the tenant about Jeo (legal representative of Harjas) being a necessary party is accepted, the application of the tenant under Section 18 of the Act must also be dimissed on the short ground that the tenant had admittedly not impleaded Harjas or Jeo as a respondent in his original application for purchase. Mr. Mittal fairly and frankly admitted that Harjas was one of the co-owners and that the tenancy of Ripu was joint and indivisible under the landowners and the heir

(2) A.I.R. 1965 S.C. 1491.

of Harjas but complained that the rival cases had been weighed with different scales. He emphasised that the tenant must also fail on the same ground and both sides should be left to start *de-novo* proceedings if they so desire. The second and the only other submission made by the counsel in this writ petition (C.W. No. 2855) was that in dealing with this case the authorities under the Act had to decide the question of Rajmal only, (who was admittedly the land-owner in 1953) being a small or big land-owner and that the legal representative of Harjas having or not having been impleaded as a party to the proceedings by the landowners was, therefore, wholly irrelevant and immaterial in the circumstances of the case.

I will first take up the tenant's petition, that is, Civil Writ No. 1731 of 1966. A glaring and apparent error of law appears to have been committed by the Financial Commissioner in paragraph 5 of his impugned order, dated September 11, 1965, as well as in the order of Shri Damodar Dass, Additional Commissioner, Ambala Division, dated January 22, 1964, wherein it was held that the second appeal of the tenant against the original order of the Assistant Collector and the first appellate order of the Collector declining to grant the application of the tenant under section 18 of the Act with reference to the remaining land comprised in the tenancy in dispute (beyond 28 Kanals), was not maintainable. Relevant part of the section 24 of the Act provides that the right of appeal is to be determined in accordance with the provisions of section 80 of the Punjab Tenancy Act. Section 80 reads as follows:—

> "Subject to the provisions of this Act and the rules thereunder, an appeal shall lie from an original or appellate order or decree made under this Act by a Revenue-Officer or Revenue Court, as follows, namely:—
>
> (a) to the Collector when the order or decree is made by an Assistant Collector of either grade;
>
> (b) to the Commissioner when the order or decree is made by a Collector;
>
> (c) to the Financial Commissioner when the order or decree is made by a Commissioner:
>
> Provided that—
>
> (i) an appeal from an order or decree made by an Assistant Collector of the first grade specially empowered by

name in that behalf by the State Government in a suit mentioned in the first group of sub-section (3) of section 77 shall lie to the Commissioner and not to the Collector;

(ii) when an original order or decree is confirmed on first appeal, a further appeal shall not lie;

(iii) when any such order or decree is modified or reversed on appeal by the Collector, the order or decree made by the Commissioner on further appeal, if any, to him shall be final."

A mere reading of clause (b) of the purview of section 80 shows that the statute has expressly given a right of appeal to a party aggrieved by an appellate order of the Collector and that such an appeal lies to the Commissioner. What calls for construction in this connection is proviso (ii) to the section. The contention which seems to have found favour with the Commissioner and the Financial Commissioner in their impugned orders in this respect is that in so far as the claim of the tenant for purchasing the land beyond 28 Kanals was concerned, the finding of the Collector at the first appellate stage was one confirming that of the Assistant Collector, and that, therefore, the right of the tenant to prefer the second appeal was excluded by the said proviso. On the other hand, the case of the tenant is that the right to prefer second appeal is taken away by the second proviso to section 80 of the Punjab Tenancy Act only if the decree or an order passed by the first Appellate Officer or Court does not in any manner vary the order passed by the Officer or Court of the first instance. It is only in such a situation, it has been contended on behalf of the tenant, that the order of the Court of first instance is deemed to have been "confirmed on first appeal" within the meaning of that expression used in the second proviso to section 80. I find no escape from the interpretation sought to be placed on the relevant proviso by the learned counsel for the tenant. The simple question which appears to me to call for an answer in this context is whether the order of the Assistant Collector on the tenant's application under section 18 was confirmed on first appeal or not. The straight answer to the question is that it was not confirmed, but was varied. The Assistant Collector's order, dated October 29, 1962 (Annexure 'A') had not been confirmed by the Collector. By his first appellate order (Annexure 'B'), the Collector had varied the decision of the Assistant Collector. The second proviso to section 80 has no application to a

case of this type, and did not, therefore, bar the appeal which the tenant was entitled to prefer against the first appellate order under clause (b) of section 80. What appears to have impressed the Commissioner and the Financial Commissioner in this respect is that a litigant cannot be permitted to take advantage of escaping the effect of the second proviso by a variation made by the first appellate authority in favour of the party who wants to prefer an appeal. This way of looking at the relevant provision is obviously fallacious.

A Full Bench of this Court has held in *Union of India* v. *Kanahaya Lal-Sham Lal* (3), in connection with the interpretation of the expression "decree of affirmance" used in Article 133 of the Constitution that an appeal can lie only against a decision as a whole and not against a part of the decision and that a judgment would not be of affirmance if it confirms and ratifies the decision on certain points and modifies the same in others. Their Lordships who constituted the Full Bench of this Court held that if a judgment is partly in favour of a party and partly adverse to him and he appeals from the portion which is adverse, the judgment of the appellate Court cannot be regarded as a judgment of affirmance if it modifies the decision under appeal in favour of the appellant.

In *Tirumalachetti Rajaram* v. *Tirumalachetti Radhakrishnayya Chetty and others* (4), it has been held in connection with the interpretation of Article 133(1) of the Constitution that if the appellate decree passed by the High Court makes a variation in the decision of the trial Court under appeal in favour of a party who intends to prefer an appeal against the said appellate decree, the said decree cannot be said to have affirmed the decision of the trial Court. I, therefore, hold that the right conferred by clause (b) of section 80 of the Punjab Tenancy Act on a party aggrieved by any portion of an appellate order made in the first appeal is not taken away by the second proviso to that section unless the order passed by the Revenue Court in the first instance has been confirmed *in toto* by the order of the first appellate Court. In case of any variation in the order of the Court of first instance, the proviso has no application and the right conferred by clause (b) of the purview subsists unaffected. The right would not be taken away by the above-said proviso irrespective of whether the variation made by the first appellate officer or Court is

(3) I.L.R. 1957 Punj. 255 (F.B.)=A.I.R. 1957 Pb. 117 (F.B.).
(4) A.I.R. 1961 S.C. 1795.

in favour of the party intending to prefer the second appeal, or against the said party. The orders of the Commissioner as well as of the Financial Commissioner against the tenant in the above case must, therefore, be set aside on this short ground.

This brings me to the two writ petitions filed by the landowners. As stated earlier Civil Writ 2855 of 1965, is directed against paragraph 6 of the Financial Commissioner's order upholding the judgment of the Additional Commissioner, Ambala Division, dated January 22, 1964, dismissing the appeal of the landowners against the orders of the Collector, Hissar, dated September 6, 1963, whereby the Collector accepted the tenant's appeal against the order of the Assistant Collector, dated October 29, 1962, and allowed the tenant to purchase 28 Kanals out of 68 Kanals and 8 Marlas of the land comprised in his tenancy on the solitary ground that the failure of the landowners to implead Jeo in their appeal before the Additional Commissioner was fatal and the order of the Additional Commissioner rejecting their appeal on that ground could not, therefore, be interfered with. The correctness of the finding depends upon the fact whether Harjas or his legal representative was or was not a necessary party to the appeal preferred by the landowners against the first appellate order of the Collector in the purchase proceedings. In *Municipal Council, Rajamundry* v. *Simhadri Ranganayakalu and others* (5), Subba Rao, C.J. (as he then was) held that a party without whom no decree at all can be passed is a necessary party. Mr. R. S. Mittal has also referred to the judgment of Jindra Lal, J., dated September 10, 1964, in C.M. 671-C of 1964, in Regular First Appeal No. 34 of 1963—*Udham Dass* v. *Paul Dass*, wherein the learned Judge held that a necessary party who had not been impleaded at the trial stage could not narmally be allowed to be added to the array of respondents at the appellate stage. The argument of Mr. Mittal was that the purchase proceedings were started by the tenant who had not impleaded Harjas or his legal representative, in the petition under section 18 of the Act, that the tenant had surreptitiously added Jeo as a respondent in the appeal before the Collector, of which fact the landowners were ignorant, that the landowners in their second appeal before the Commissioner had taken up the following ground in support of their appeal as ground No. 1 and that instead of accepting the landowners' second appeal and dismissing the application of the tenant as being not competent fo want of necessary parties,

(5) A.I.R. 1955 A.P. 107.

the Additional Commissioner erroneously proceeded to dismiss the second appeal of the landowners for their not having impleaded the legal representative of Harjas at the second appellate stage:—

> "That Harjas, son of Kala was one of the joint owners of the land in dispute alongwith the present appellants and on his death Mst. Jeo, his sister, succeeded him as heir. The application under section 18 was made by the respondent without impleading Jeo as a party. The application, therefore, being against some of the landowners and not all of them was not legally maintainable. This objection was raised on behalf of the appellants before the Assistant Collector. Again this objection was repeated before the learned Collector as respondent had filed his appeal to the Collector without impleading Jeo as a party. The learned Collector was wrong in not entertaining this objection of the appellants. Fo non-joinder of Jeo, a necessary party, the entire proceedings before the Assistant Collector as well as the Collector were null and void."

The above-qouted ground taken up by the landowners in their second appeal shows two things, namely, (i) that the landowners were really ignorant of the fact that the tenant had impleaded Jeo as a respondent in his first appeal before the Collector; and (ii) that on their own saying the landowners admitted that Harjas and after him Jeo was a necessary party to the proceedings. The stage for considering the objections raised in the landowners second appeal did not arise as the appeal itself was dismissed for want of the presence of a necessary party.

Next contention advanced by Mr. Mittal in Civil Writ No. 2855 was to the effect that after the termination of relationship of landlords and tenants between the parties by a valid and binding decree of the Revenue Court, the purchase proceedings by the tenant, if not already concluded, automatically abate and the statutory right of the tenant to purchase the tenancy premises in certain contingencies comes to an end as the remedy provided by section 18 is available only to a person holding a subsisting tenancy and not to an erstwhile tenant. Mr. Mittal's argument on this point proceeded thus: In order to succeed in an action under section 18 of the Act, the claimant must not only be a tenant of the land in question, on the date of filing of his petition, but must also continue to remain a tenant of the land in

question till the order for purchase is passed in his favour. In fact vested right accrues to the tenant only after he makes payment of the first instalment of the price fixed in an order under section 18. In any event, if the tenancy comes to an end either by volition of parties or by operation of law or by an order of a competent Court before even the Assistant Collector first Grade has passed any final order in the tenant's petition under section 18, the remedy of the tenant available under that section comes to an end. Mr. Mittal has refered to the judgment of the Supreme Court in *Kapur Chand* v. *R. S. Grewal, Financial Commissioner, Punjab, Chandigarh and others* (2) but the law laid down therein does not appear to be directly relevant for deciding the question in issue in these cases. Mr. B. N. Aggarwal, the learned counsel for the tenant, has relied on the judgment of Mahajan, J. in *Har Sarup and another* v. *The Financial Commissioner, Revenue, Punjab* (6), for canvassing the proposition that in case of simultaneous proceedings for ejectment and purchase, the latter proceedings should be given preference, and if it is found that the tenant is entitled to purchase the land comprised in his tenancy, no order for ejectment should be passed. I have gone through the judgment of the learned Judge and have not been able to find any such thing having been definitely laid down therein. All that was held by the learned Judge in the case of *Har Sarup and another* (supra) was that the mere fact that a tenant had incurred the liability for eviction by reason of non-payment of rent would not put an end the admitted relationship of landlord and tenant between the parties. Mahajan, J., took abundant care to state clearly in the very next sentence that "this liability puts an end to the aforesaid relationship when the eviction decree is passed." What happened in that case was this. The landlords made an application for ejectment on May 1, 1958. The tenants applied under section 18 during the pendency of the ejectment proceedings on July 16, 1959. Both the cases were disposed of together by the Assistant Collector on March 16, 1962. Eviction was allowed but the tenants' application was dismissed as they were not found to be in possession for a continuous period of six years before they filed their application. In appeal order of eviction was maintained, but the Collector partially reversed the order of the Assistant Collector with regard to the tenants' application under section 18 in respect of a part of the holding. He, therefore, directed that the tenants would not be liable to be ejected from that much of the land. Further appeal of the landlords was

(6) (1965) 44 L.L.T. (Revenue Rulings) 157.

allowed by the Commissioner on the ground that the tenants had failed to prove six years' possession. The Financial Commissioner, in revision, held that in view of the acceptance of the landlords' application for ejectment of the tenants, the subsequent application of the tenants under section 18 of the Act could not be considered. It was held that since the tenants were to be ejected, there could be no question of their purchasing the land. It was against the above-said order of the Financial Commissioner that the writ petition was filed in this Court by Har Sarup, etc., the tenants. When the case was heard by Mahajan, J., on November 12, 1964, the Financial Commissioner was directed to determine the period of possession of the tenants before finally disposing of the writ petition. The Financial Commissioner reported that the tenants were in possession of the area in dispute for a continuous period of six years. It is in the situation detailed above that the writ petition was allowed to the extent already indicated. By mentioning the fact that the eviction decree had been passed in the case of *Har Sarup and another* long after the section 18 application had been made, the learned Judge does not appear to have made it the basis of his judgment. The fact remains that the ejectment proceedings as well as the purchase petition were dismissed by the Assistant Collector on the same day. In the instant case, however, the tenancy had come to an end before the rights of the tenant to purchase any part of the land in dispute were adjudicated upon. It was argued by Mr. Mittal that in such a situation, the tenant having ceased to hold that capacity forfeits his right to claim to purchase the land under section 18.

Mr. B. N. Aggarwal then referred to the judgment of Shamsher Bahadur, J., in *Malik Labhu Masih* v. *Financial Commissioner, Punjab and another* (7). The learned Judge held in that case that it may be that proceedings for ejectment may have been taken before or after the application under section 18, but if there is no order of ejectment when the application is made, the right of the tenant to purchase the land under section 18 subsists, as the right under section 18 is independent of the landlord's right to eject a tenant under section 9. It was further held that so long as the tenant is on the land his right to purchase cannot be denied or defeated.

(7) (1966) 45 L.L.T. (Revenue Rulings) 200.

Reference was then made to a Division Bench judgment of this Court (Shamsher Bahadur, J., and myself); in *Amar Singh* v. *State of Punjab and another* (8). The contest in that case was between the provisions of section 10-A and section 18 of the Act. In that context it was held that the more specific and later provision contained in section 18 of the Act, should be allowed to over-ride the earlier and the general provision contained in section 10-A. The question now facing me does not appear to have been decided by the Division Bench in *Amar Singh's case* (supra). Prima facie it appears that nothing turns merely on the application of the tenant or of the landlord being prior and that irrespective of who applies first, the rights of the parties may be affected by the earlier conclusion of one of the two proceedings. If the application of the tenant for purchase is granted before the order of eviction is passed, and the tenant makes payment of the first instalment, he ceases to be a tenant and no question of his eviction can arise. If on the other hand his tenancy is brought to an end by an order of ejectment, his status as a tenant which is the very basis of an application under section 18 is lost, and he cannot then claim to purchase the land. As this matter has to go back to the authorities under the Act, and since in the view I am taking of the ejectment proceedings which are the subject-matter of Civil Writ 2854 of 1965, it has yet to be decided finally whether the tenant was liable to be ejected or not, all the contentions of the parties will have to be dealt with by the authorities under the Act at the appropriate stage. The claim of the tenant even to the 28 Kanals proved to be with him (subject to landowners' right of second appeal and revision) had to depend on whether the question of Small Landowner had to be decided *qua* Raj Mall or the present landowners. The objection of the landowners about the original petition under section 18 being not competent for want of impleading co-owner, Harjas, had also to be decided. None of the two points has been decided either by the Commissioner or by the Financial Commissioner. The fate of the case could depend upon the decision of these legal issues. Errors of law in this respect are apparent on the face of the orders of the Commissioner and Financial Commissioner. Civil Writ of 1965 is allowed on this gound. The Commissioner will consider and decide the effect, if any, of earlier filing or earlier decision of any of the two proceedings, if any of these two points survives this judgment.

(8) I.L.R. (1967) 2 Punj. 120=1967 P.L.J. 38.

So far as Civil Writ 2854 of 1965, is concerned, I hold, for the reasons already given in an earlier part of this judgment, that the Financial Commissioner had no jurisdiction as a revisional authority to interfere with pure findings of fact on which the order of ejectment of the tenant had been based by the Collector and upheld by the Commissioner. The revisional jurisdiction of the Financial Commissioner is limited and he appears to have exceeded the same in reappraising the evidence and reversing the judgment of the Commissioner without even referring to the detailed reasoning of the Collector. On behalf of the tenant it is argued that the application of the landlords for ejectment was liable to be dismissed by the Commissioner as well as the Financial Commissioner on the short admitted ground that the landowners' petition for ejectment had not been filed by all the landowners inasmuch as Harjas had not joined the landowners in the said proceedings. The order of the Commissioner has also to be quashed in the ejectment case as he allowed ejectment without deciding the question of effect of non-impleading of all co-sharers by the landowners. As all the three matters will now have to be heard and decided by the Commissioner together, the decision on the question of effect of non-impleading of all the co-sharers at the original stage in the ejectment proceedings as well as in the purchase proceedings will hit either both sides or none. All other points will also have to be considered by the Commissioner while dealing with the tenant's appeal against the Collector's appellate order, dated August 16, 1963, Civil Writ 2854 of 1965, has, therefore to be allowed and the orders of the Financial Commissioner in R.O.R. 623 and of the Commissioner, dated January 22, 1964, have to be quashed.

For the foregoing reasons:—

(i) I allow Civil Writ 1731 of 1966, and quash the orders of the Commissioner, dated January 22, 1964, and Financial Commissioner in R.O.R. 621, whereby it was held that the tenant had no right of second appeal against the first appellate order of the Collector, but leave the parties to bear their own costs. The second appeal of the tenant will now be heard and decided by the Commissioner according to law and in the light of the observations made in this judgment.

(ii) I also allow Civil Writ 2854 of 1965, and set aside the order of the Financial Commissioner in R.O.R. 623 whereby he

reversed the order of the first and second appellate authorities and also of the Commissioner, dated January 22, 1964, leaving it open to the tenant to pursue his appeal against the appellate order of ejectment passed by the Collector at the first appellate stage on August 16, 1963. I make no order as to costs in this case also.

(iii) Civil Writ 2855 of 1965, is also allowed and the orders of the Financial Commissioner in R.O.R. 622 and of the Commissioner, dated January 22, 1964, under section 18 of the Act, relating to 28 Kanals of land are quashed, leaving it open to the landlords to pursue their appeal before the Commissioner in accordance with law. The course adopted by me in the other two cases of leaving the parties to bear their own costs is adhered to in this petition too.

R.N.M.

APPELLATE CIVIL

Before R. S. Narula, J.

SODAGAR SINGH AND OTHERS,—*Appellants*

versus

SHAM KAUR AND OTHERS,—*Respondents*

Regular Second Appeal No. 1131 of 1963

October 10, 1967

Land Revenue Act (XVII 1887)—S. 117 (2) (b)—*Revenue Officer acting as Civil Court and directing suit to be filed within a specified time for getting the disputed question of title determined—suit filed after the time so fixed but within the period allowed by law of limitation—Whether can be dismissed as barred by time.*

Held, that the Revenue Officer has no jurisdiction to control the intended proceedings in the Civil Court even though he himself may be intending to preside over the Civil Court under clause (b) of sub-section (2) of section 117 of the