asked the respondent to resume or rectify the work for the last five years and nothing remains to be done by the respondent in the matter of execution of the contract. Since 1964, both sides have taken it for granted that the respondent has abandoned the contract for execution of the works in question.

(40) No other argument having been addressed to us in this behalf, we have no hesitation in holding on the facts and in the circumstances of this case, that the contract for the construction of additional Siswan Super-pasage, Kamalpur, Rupar, which had been entered into by the respondent in the course of his business with the Punjab Government in 1963, ceased to subsist before the end of December, 1964, and was, therefore, not subsisting in January/February, 1969. We accordingly hold that the respondent was not disqualified under section 9-A of the Act either on the date of filing his nomination papers or at any time thereafter. The election of the respondent cannot, therefore, be set aside under section 100(1)(c) of the Act as the respondent is not shown to have been disqualified to be chosen to fill the seat in the Punjab Legislature to which he was elected.

(41) For the foregoing reasons, this petition fails and is dismissed with costs. Counsel's fee Rs. 1,000/-:

D. K. Mahajan, J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

KISHAN SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 654 of 1969

September 22, 1969.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955 as amended by XXXVII of 1962)—Section 32-D—Interpretation of—Collector's order scrutinised under Sections 32-D(3) or 32-D(4)—Whether can be re-opened Collector—Whether has jurisdiction to review his order passed under section

32-D(2)—No appeal filed against the order of the Collector—Such order—Whether can be set aside by State Government—Reasons for setting aside the order—Whether must be given—State Government—Whether can substitute its own order for the order of the Collector.

Held that if the order of the Collector is once subjected to scrutiny either under sub-section (3) or under sub-section (4) of section 32-D of Pepsu Tenancy and Agricultural Lands Act, it cannot be re-opened again under either of those provisions because of the finality attached to the order of the State Government under sub-section (5). (Para 11)

Held, that the Collector has no jurisdiction to review his order passed under sub-section (2) of section 32-D except for the purposes of correcting some clerical or arithmetical mistakes under section 40 of the Act. There is however, no bar to the Collector moving the State Government under section 32-D(4) for revising an order passed by his predecessor in a suitable case. (Para 12)

Held, that the State Government and its delegate have the power and authority under sub-section (4) of section 32-D of the Act to set aside the order of the Collector against which either no appeal has been preferred under sub-section (3) or against which the appeal filed by a party has not yet been decided. The order of the State Government passed under sub-section (4) of section 32-D setting aside the order of the Collector would be valid only if it is supported by some reason, in which reason there is no error of law apparent on the face of the record. (Para 12)

Held, that if the State Government or its delegate, the Commissioner, proceeds to set aside under sub-section (4) an order of the Collector passed under sub-section (2) for reasons to be recorded by it, the State Government may either substitute its own order for the order of the Collector or remand the case to the Collector for sending up a report on any particular point or for deciding the case afresh. (Para 12)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate writ, order or direction be issued quashing the report dated 30th October, 1968, of Respondent No. 3 and the order dated 17th December, 1968, of Respondent No. 2 whereby he accepted the report of respondent No. 3 and ordered that the case relating to the determination of permissible area and the surplus area in the hands of the petitioner be decided afresh and directing that the order dated 30th January, 1961 of Respondent No. 3 has become final and cannot be re-opened.

K. C. Puri, Shri R. S. Dhillon and Shri S. K. Goyal, Advocates, for the Petitioner.

B. S. Dhillon, Advocate-General, (Punjab), for the Respondents.

JUDGMENT.

NARULA, J.—The question of true and correct interpretation of sub-sections (4) and (5) of section 32-D of the Pepsu Tenancy and Agricultural Lands Act (13 of 1955) as amended by the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act (27 of 1962), hereinafter called the Act, has arisen in this petition under articles 226 and 227 of the Constitution in the following circumstances.

(2) Kishan Singh landowner, hereinafter referred to as the petitioner, has one son Jangir Singh and two grandsons viz., Rup Singh and Sukhdev Singh. The petitioner owned land—

(i) in village Dhudi measuring 13.96 standard acres; and

(ii) in village Chak Dhudi measuring 33.76 standard acres;

in Tehsil Faridkot, on November 9, 1953, Kishan Singh got report No. 91 (annexure 'A') recorded in the Roznamcha Waqiati of the Patwari. Annexure A-I to the writ petition is a translation of the said report in English. The translation, the correctness of which has not been disputed, reads as follows—

> "I have transferred half of my land situated in village Dhudi. Mutation of that land be effected half in my name and half in the name of Jangir Singh. The land situate in Chak Dhudi be mutated in favour of Rup Singh and Sukhdev Singh, sons of Jangir Singh—my grandsons because I have to go to Bikaner. It is difficult to look after the entire land here. I have transferred it willingly and voluntarily."

According to the petitioner, these transfers were made by way of gifts. The Khasra Girdawaris (marked exhibits P. 2 and P. 3 in the proceedings before the departmental authorities) show that possession of the gifted lands was handed over to the donees at the time of the report and that the donees have continued to remain in possession thereof till now.

(3) The petitioner filed his return in respect of his holding wherein he showed the above mentioned alienations. The particulars of the return were checked by the Naib Tehsildar, Agrarian, and draft statement under sub-section (2) of section 32-D was thereupon issued

inviting objections against the same. It appears that the alienations were ignored in the draft statement. This led to the petitioner filing objections against the statement on December 16, 1960. By his order, dated January 30, 1961, Shri Barjinder Singh, Collector, Agrarian Reforms, Faridkot, appraised the evidence produced before him including the entry in the Roznamcha Waqiati and the deposition of Jai Singh Patwari, incharge, Dhudi Circle, dated January 17, 1961 (copy annexure 'B' and translation annexure B-I) as well as Khasra Girdawaris referred to above, and held that the area which formed the subject-matter of the gifts should not be included in the holdings of the petitioner. The result of exclusion of the donated land from consideration was that no surplus area remained in the name of the petitioner. The Collector, therefore, allowed the objection petition and directed that the case be filed and consigned to the record. Admittedly, no appeal was preferred by the State against the above mentioned order of the Collector, though an appeal lay against the same under sub-section (3) of section 32-D of the Act.

(4) On the complaint of one Gurdial Singh, the Collector (Shri J. S. Qaumi, Sub-Divisional Officer, Civil, Faridkot, exercising the powers of Collector Agrarian, Faridkot) issued notice to the petitioner, whose counsel brought the gifts in question to the notice of the Collector. Thereupon, the Collector passed the order, dated October, 30, 1968 (annexure 'D', the operative part of which reads as follows:—

> "As this case requires re-examination on the point of total assessable area on 30th October, 1956, this case is referred to the learned Commissioner, Patiala Division, for permission to review order, dated 30th January, 1961 of the then Collector Agrarian, Faridkot. The parties will, of course, be given opportunity to represent their case."

(5) When the matter went up to Shri R. S. Kang, the Commissioner, Patiala Division, he appears to have dealt with the matter in a somewhat routine manner and passed an order, dated December 17, 1968 (annexure 'E') in the following terms—

> "In exercise of the powers of State Government under section 32-D(4) of the Pepsu Tenancy and Agricultural Lands Act, 1955, vested in me, I order that the case relating to the determination of permissible and the surplus area in the hands of Kishan Singh, son of Gurmukh Singh of the

village of Dhudi, Tehsil Faridkot, be decided afresh as recommended by the Collector (S.D.O., Civil), Faridkot, in his reference, dated the 30th of October, 1968."

(6) This petition was thereupon filed in March, 1969, for issue of an appropriate, writ, order or direction to quash the Collector's report dated October 30, 1968 (annexure 'D') and the order of the Commissioner, dated December 17, 1968 (Annexure 'E') on various grounds.

(7) The Punjab Government has contested the writ petition and has filed an affidavit of Shri V. P. Capoor, Under Secretary, Revenue Department, by way of its return. The respondent State has in its written statement tried to justify the impugned orders on merits.

(8) At the hearing of the writ petition, Mr. K. C. Puri, learned counsel for the petitioner, has pressed only two grounds for attacking the impugned orders, viz.—

(1) No appeal having been filed against the order of the Collector under sub-section (3) of section 32-D, the order of the Collector has assumed finality under sub-section (5) of that section on the expiry of the period of limitation prescribed for the appeal and the State Government had thereafter no jurisdiction to reopen the case under section 32-D(4) of the Act; and

(2) Section 32-D(4) of the Act neither provides for any review nor authorises the Collector to move the Commissioner for permission to review an earlier order of the Collector. In any event, if the use of the word 'review' is held to be only on account of an unfortunate mistake, the Collector has no authority to re-open a case under section 32-D(4) and even if it is held that the Commissioner could re-open the case under that provision, he could not do so without first setting aside the original order of the Collector and for doing that, the Commissioner was bound to support his order with such reasons which could stand scrutiny of this Court in writ proceedings.

(9) In order to appreciate the first contention of Mr. Puri, it is necessary to set out sub-sections (1) to (5) of section 32-D of the Act. These provisions read—

"32-D. (1) On the basis of the information given in the return under section 32-B or the declaration furnished under sub-section (1) of section 32-BB which shall be duly verified

through such agency as may be prescribed or the information obtained by the Collector under sub-section (3) of section 32-BB or section 32-C, the Collector shall prepare a draft statement in the manner prescribed showing among other particulars, the total area of land owned or held by such a person, the specific parcels of land which the landowner may retain by way of his permissible limit or exemption from ceiling and also the surplus area.

(2) The draft statement shall include the advice of the Pepsu Land Commission appointed under section 32-P regarding the exemption from ceiling if claimed by the landowner and be published in the office of the Collector and a copy thereof shall be served upon the person or persons concerned in the form and manner prescribed. Any objection received within thirty days of the service shall be duly considered by the Collector and after affording the objector an opportunity of being heard order shall be passed on the objection.

(3) Any person aggrieved by an order of the Collector under sub-section (2) may, within thirty days of the order, prefer an appeal to the State Government or an officer authorised by the State Government in this behalf.

(4) Without prejudice to any action under sub-section (3), the State Government may of its own motion call for any record relating to the draft statement at any time and, after affording the person concerned an opportunity of being heard, pass such order as it may deem fit.

(5) Any order of the State Government under sub-section (3) or sub-section (4), or of the Collector subject to the decision of the State Government under those sub-sections shall be final.

(6) * * * * *

(7) * * * *

(10) The argument of Mr. Puri, is that if no appeal is preferred under sub-section (3) the order of the Collector under sub-section (2) becomes final after the expiry of the period of limitation for the appeal and that this finality is made unassailable by sub-section (5).

According to the counsel, finality is attached to each of the following orders mentioned in sub-section (5)—

(a) An order passed by the State Government under sub-section (3) of section 32-D;

(b) An order passed by the State Government under sub-section (4) of section 32-D; and

(c) An order passed by the Collector under sub-section (2) of section 32-D, against which no appeal has been preferred.

Counsel submits that in either of the three eventualities the State Government cannot re-open the order of its own delegate or of the Collector as the case may be. Mr. Puri, relied in support of this proposition on the judgment of Sarkaria, J., in *Chhota Singh and others* v. *State of Punjab and others* (1). The relevant point is discussed in paragraphs 15 to 19 of the learned Judge's judgment as reported in the Punjab Law Journal. The only facts of that case, which are relevant for deciding the present issue, were these. The Collector had passed an order under sub-section (2) on January 3, 1962. The landowner filed an appeal against that order under sub-section (3) which was dismissed by the Commissioner, Patiala Division, as delegate of the State Government, on May 1, 1962. Thereafter, the State Government re-opened the matter under sub-section (4) of section 32-D and passed the impugned order on December 30, 1966. Sarkaria, J. held that the second order of the State Government did not fall within the purview of sub-section (4) because powers under that provision could be exercised only before May 1, 1962, i.e., prior to the Collector's order having become final under sub-section (5) of section 32-D. Sarkaria, J., further observed that the expression 'at any time' occurring in sub-section (4) refers to a period of time before the order of Collector or the State Government becomes final under sub-section (5), and that on the facts of *Chhota Singh's case* (1), the Collector's order, dated January 3, 1962, had attained finality under sub-section (5) as soon as appeal against that order had been dismissed by the State Government. Reliance was placed by the learned Judge on the Full Bench judgment of this Court in *Deep Chand and another* v. *Additional Director, Consolidation of Holdings, Punjab, Jullundur* (2), and on the judgment of their Lordships of the Supreme Court in *Harbhajan Singh* v. *Karam Singh* (3), in order to draw an analogy of

(1) 1968 P.L.J. 38.
(2) I.L.R. 1964 (1) Pb. 665=1964 P.L.R. 318.
(3) A.I.R. 1966 S.C. 641.

the powers vested in the State Government under section 36 on the one hand and section 42 on the other of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948). The order of the State Government passed under sub-section (4) was set aside by Sarkaria, J., on the ground that it amounted to a review of the previous order of the Commissioner under sub-section (3) which he had pased as a delegate of the State Government.

(11) After carefully considering the matter, I am of the opinion that the law laid down by Sarkaria, J., (which was upheld by the Division Bench by dismissing L.P.A. 410 of 1967, *in limine* on December 6, 1967), does not have any impact on the facts of the present case. The very lucid judgment of Sarkaria, J., leaves no doubt in my mind that what weighed with his Lordship was that the State Government can exercise its powers relating to the draft statement only once, and that may be either under sub-section (3) or under sub-section (4) of section 32-D of the Act. From this, the learned Judge rightly concluded that if the State Government has once exercised its power under sub-section (3) of order of the State Government under that provision attains finality under sub-section (5) and leaves no further jurisdiction with the State Government to re-open the matter under sub-section (4). If this were not so, the State Government would be permitted to review its own order in relation to the same draft statement any number of times. I am, therefore, in full agreement with the judgment of Sarkaria, J., in so far as it goes. I am, however, unable to spell out from that judgment any finding to the effect that the order of the Collector which has not been subjected to scrutiny of the State Government at any stage under sub-section (3) would also become immune to its being scrutinised under sub-section (4) by virtue of the finality attached to it under sub-section (5). Such an interpretation of sub-sections (4) and (5) would, in my opinion, cut at the very root of the object of the plenary powers vested in the State under sub-section (4). I would, therefore, hold—

(1) that if the order of the Collector is once subjected to scrutiny either under sub-section (3) or under sub-section (4) of section 32-D, it cannot be re-opened again under either of those provisions because of the finality attached to the order of the State Government under sub-section (5); and

(2) that the order of the Collector which has not been appealed against does not become immune to the exercise of revisional jurisdiction of the State Government under sub-section (4).

As a necessary consequence of my above finding, the first submission of Mr. Puri fails.

(12) Regarding the second ground of attack, it neither was nor could be disputed that the word 'review' was used by the Collector as well as by the Commissioner in their impugned report and order respectively due to some misapprehension and that the Act does not confer any power of review on the Collector either with or without the permission of the Commissioner. Mr. Puri appears to be correct in submitting that the Collector used the word 'review' and the Commissioner adopted the same because of their usual experience in proceedings under the Punjab Land Revenue Act and the Punjab Tenancy Act where such a procedure is provided. I, however, agree with Mr. B. S: Dhillon, learned Advocate-General, Punjab, who appears for the respondents, that the Commissioner having expressly referred to the provisions of sub-section (4) of section 32-D, the impugned order of the Commissioner should be deemed to have been passed under that provision and that the report of the Collector should be ignored. It is at this stage that the second part of Mr. Puri's second submission becomes available to the petitioner. Once I agree with the learned Advocate-General to hold that the impugned order was sought to be passed by the Commissioner under sub-section (4) of section 32-D, it appears to me to be plain that the power vested in the Commissioner under that provision being quasi-judicial, it cannot be exercised in a whimsical or an arbitrary manner. In order to revise the order of the Collector passed under sub-section (2), the Commissioner must first come to a finding that the order of the Collector is not correct. Such a finding must be supported by cogent reasons. If the Commissioner is able to find some reasons and proceeds to set aside the order of the Collector, two alternatives become available to the Commissioner at that stage. The Commissioner may either hear the parties, peruse the records, take such other evidence as he may like and after a proper enquiry and hearing pass such order in place of the original order of the Collector as he may think proper. The other alternative is that having found definite fault with the Collector's order, the Commissioner may set it aside for the reasons to be recorded by him and then direct *de-novo* enquiry or decision by the Collector. In the present case, the Commissioner seems to have passed the impugned order (annexure 'E') on the assumption that he was not expected to travel into the merits of the matter and he was merely sanctioning a review. He seems to have thought that as a result of the sanction given by him the Collector would decide whether to set

aside the previous Collector's order or not and if so, what order to substitute for the same. This procedure adopted by the Commissioner is patently erroneous in law. I will hold:—

(1) that the Collector has no jurisdiction to review his order passed under sub-section (2) of section 32-D except for the purposes of correcting some clerical or arithmetical mistakes under section 40 of the Act;

(2) that there is no bar to the Collector moving the State Government under section 32-D(4) for revising an order passed by his predecessor in a suitable case ;

(3) that the State Government and its delegate have the power and authority under sub-section (4) of section 32-D to set aside the order of the Collector against which either no appeal has been preferred under sub-section (3) or against which the appeal filed by a party has not yet been decided;

(4) that the order of the State Government passed under sub-section (4) of section 32-D setting aside the order of the Collector would be valid only if it is supported by some reason, in which reason there is no error of law apparent on the face of the record; and

(5) that if the State Government or its delegate, the Commissioner, proceeds to set aside under sub-section (4) an order of the Collector passed under sub-section (2) for reasons to be recorded by it, the State Government may either substitute its own order for the order of the Collector or remand the case to the Collector for sending up a report on any particular point or for deciding the case afresh.

Since in the present case, the Commissioner appears to have passed his impugned order as a matter of routine without applying his mind to the facts of the case and without even proceedings to set aside the original order of the Collector and without giving any reason for re-opening the matter, the order of the Commissioner cannot be sustained and must be quashed.

(13) In the above mentioned circumstances, this writ petition is allowed, the report of the Collector, dated October 30, 1968 (annexure 'D') and the order of the Commissioner, dated December 17, 1968

(annexure 'E') are quashed and set aside. In the circumstances of the case, there is no order as to costs.

K. S. K.

REVISIONAL CIVIL

Before D. K. Mahajan, J.

SARWAN SINGH,—*Petitioner.*

versus

KAUR CHAND AND ANOTHER,—*Respondents.*

Civil Revision No. 521 of 1968

September 23, 1969.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(c) and 13—Application for eviction—Decendants of original land-lord—Whether individually have right to file such application.

Held, that it is apparent from the definition of "landlord" in section 2(c) of East Punjab Urban Rent Restriction Act that every person who derives title from the landlord is the landlord. The result is that all the descendants of a original landlord, who has died, are landlords individually in their own right. Section 13 of the Act under which an application for eviction is made provides that a landlord who wants to evict shall apply to the Controller in that behalf. Therefore, it is obvious that one of the landlords can make application for eviction of the tenant under the Act.

(Para 3)

Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, for revision of the order of Shri Diali Ram Puri, Appellate Authority, Ferozepore, dated 16th May, 1968, reversing that of Shri Hardial Singh, Rent Controller, Muktsar, dated 19th October, 1967, setting aside the order of the learned Controller and accepting this appeal and directing the tenant-respondent to deliver possession of the tenancy premises in dispute to the landlords-appellants.

PURAN CHAND, ADVOCATE, for the Petitioner.

G. C. MITTAL, ADVOCATE, for the Respondents.

JUDGMENT

MAHAJAN, J.—This petition for revision is directed against the decision of the apppellate authority reversing on appeal the decision of the Rent Controller rejecting the application of the landlords-respondents for eviction of the petitioner-tenant. The eviction