the East Punjab (Amendment) Motor Vehicles Act, No. XXVIII of 1948. Clause (h) is reproduced below :—

> "Government may ask the appellate authority prescribed under the rules framed under this Section to forward for its consideration any of the appeal decided by the appellate authority and may later, revise, cancel or uphold any such orders."

(7) Under clause (h), the Government can, for its consideration, ask the appellate authority to forward any case of appeal decided by it and the Government may revise, cancel or uphold the order passed on appeal. This clause presupposes that the appellate authority was competent and had jurisdiction to give a decision in an appeal filed before it. As already discussed in connection with the scope of clause (f) of Section 64 of the Act, no appeal was maintainable at the instance of the appellant inasmuch as he never opposed the grant of permit to respondent No. 1 and consequently no appeal was competent. The appellate authority rightly dismissed the appeal on the ground of the appellant having no *locus standi* to maintain the appeal and the appellate authority having no jurisdiction to determine the appeal filed by the appellant. The order passed by the appellate authority rejecting the appeal on the ground of its non-maintainability being a valid and legal order, respondent No. 2 had no jurisdiction to interfere in exercise of its revisional power under clause (h) of Section 64 of the Act. Thus, the order of respondent No. 2 is illegal and not maintainable.

(8) For the foregoing reasons, we dismiss the appeal with costs and uphold the judgment of the learned Single Judge.

K.S.K.

APPELLATE CIVIL.

Before D. K. Mahajan & Gopal Singh, JJ.

RAM PARSHAD,—*Appellant.*

versus

GOBINDA ETC.,—*Respondents*

L. P. A. No. 430 of 1969

March 17, 1971.

Punjab Security of Land Tenures Act (X of 1953)—Section 17-A—word "tenant"—Whether includes "sub-tenant"—Sale by a landlord—Whether pre-emptible.

Held, that under section 17-A of Punjab Security of Land Tenures Act, 1953, only the sale of land comprising the tenancy of a tenant made to him by the landowner is not pre-emptible ; the implication being that there has to be a jural relationship of landowner and tenant. The vendee has to be a tenant of the vendor. There is no such relationship between the sub-tenant and the landowner. As between the vendor and the vendee, there has to be a relationship of landowner and tenant. It is only such a sale which is immune from pre-emption. The sale to a sub-tenant does not make section 17-A applicable. Hence the word "tenant" in section 17-A of the Act does not include "sub-tenant" and a sale to a sub-tenant is pre-emptible. (Para 4).

Letters Patent Appeal under Clause 10 of the Letters Patent, against the judgment dated 2nd May, 1969, passed by Hon'ble Mr. Justice Prem Chand Jain, in S. A. O. No. 52 of 1968, reversing that of Ved Parkash, Additional District Judge, Gurgaon, dated 26th January, 1968, who reversed that of Shri Dewan H. C. Gupta, Sub-Judge 1st Class, Palwal, dated 1st June, 1967 (dismissing both the suits) and remanding the cases for decision on other issues.

A. L. BAHRI, ADVOCATE, WITH S. C. KAPUR, ADVOCATE, for the appellant.

H. L. SARIN, SENIOR ADVOCATE, WITH A. L BEHL, ADVOCATE, for the respondents.

JUDGMENT

The Judgment of this Court was delivered by :—

MAHAJAN, J.—(1) The only question in this Letters Patent appeal concerns itself with the proposition that a 'sub-tenant' is included in the word 'tenant' in section 17-A of the Punjab Security of Land Tenures Act, 1953 (hereinafter called the Act).

(2) There is no dispute on facts. The land in question is under the tenancy of Ram Parshad. Ram Parshad had inducted a tenant under him, namely, Gobinda. Lok Nath, the landowner, sold the land in dispute to Gobinda for a sum of Rs. 4,000. This sale was pre-empted by one Parma Nand, who is the son of the vendor and by Ram Parshad, the tenant. Both suits were consolidated. The vendee claimed that the sale being to a tenant was not pre-emptible. The trial Court dismissed the suit holding that 'sub-tenant' is a 'tenant' within the meaning of the expression in section 17-A of the Act. On appeal, the learned District Judge reversed the decision of the trial

Court on the basis of a decision of this Court in *Jaimal* v. *The Financial Commissioner, Punjab* (1), which was later affirmed by the Supreme Court in *Jaimal* v. *Financial Commissioner, Punjab* (2), holding that a sub-tenant is not included in the word 'tenant' in section 18 of the Act. Against the decision of the learned District Judge, Gobinda preferred an appeal to this Court. A learned Single Judge of this Court has taken the view that a 'sub-tenant' is included in the word 'tenant' in section 17-A. The learned Judge has been mainly influenced by the definition of 'tenant' in section 2(6) which is in the following terms:—

> "In this Act, unless the context otherwise requires:—
>
> (6) 'tenant' has the meaning assigned to it in the Punjab Tenancy Act, 1887 (Act XVI of 1887), and includes a sub-tenant, and self-cultivating lessee, but shall not include a present holder as defined in section 2 of the Resettlement Act."

It will appear from the opening words that the definition of 'tenant' has a yield to the context in which the word 'tenant' is used in the main body of the Act.

(3) At this stage it will be useful to set down the relevant parts of sections 17-A, 17-B and 18 because on the interpretation of these provisions the decision hinges :—

> "17-A(1) Notwithstanding anything to the contrary contained in this Act or the Punjab Pre-emption Act, 1913, a sale of land comprising the tenancy of a tenant made to him by the land-owner shall not be pre-emptible under the Punjab Pre-emption Act, 1913, and no decree of pre-emption passed after the commencement of this Act in respect of any such sale of land shall be executed by any Court:
>
> Provided that for the purposes of this sub-section the expression tenant includes a joint tenant to whom whole or part of the land comprising the joint tenancy is sold by land-owner.

(1) 1963 P.L.R. 1072.
(2) A.I.R. 1969 S.C. 392.

(2) Where, after the commencement of this Act, a tenant, to whom the land comprising his tenancy is sold by the landowner has been dispossessed of such land by a pre-emptor in execution of a decree for pre-emption or otherwise the tenant so dispossessed shall in the prescribed manner have the option either to purchase the land from the pre-emptor on payment of the price paid to the tenant by the pre-emptor or to be restored to his tenancy under the pre-emptor on the same terms and conditions on which it was held by him immediately before the sale, on an application made by him to an Assistant Collector of the First grade having jurisdiction within a period of one year from the commencement of the Punjab Security of land Tenures (Amendment) Ordinance, 1958.

17-B(1) Where, after the commencement of this Act, land comprising the tenancy of a tenant is mortgaged to him with possession by the landowner, and such land is subsequently redeemed by the landowner, the tenant shall notwithstanding such redemption or any other law for the time being in force, be deemed to be the tenant of the landowner in respect of such land on the same terms and conditions on which it was held by him immediately before the execution of the mortgage as if the mortgage had never been executed.

18. (1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a landowner other than a small landowner—

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six year, or

(ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous occupation of the land comprised in his tenancy immediately before ejectment and immediately after restoration of his tenancy together amounts to six years or more, or

(iii) who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of this Act, and who was in continuous occupation of the land

comprised in his tenancy for a period of six years or more immediately before his ejectment,

shall be entitled to purchase from the landowner the land so held by him but not included in the reserved area of the landowner, in the case of a tenant falling within clause (i) or clause (ii) at any time, and in the case of a tenant falling within clause (iii) within a period of one year from the date of commencement of this Act :

Provided that no tenant referred to in this sub-section shall be entitled to exercise any such right in respect of the land or any portion thereof if he had sublet the land or the portion, as the case may be, to any other person during any period of his continuous occupation, unless during that period the tenant was suffering from a legal disability or physical infirmity, or, if a woman, was a widow or was unmarried :

Provided further that if the land intended to be purchased is held by another tenant who is entitled to pre-empt the sale under the next preceding section, and who is not accepted by the purchasing tenant, the tenant in actual occupation shall have the right to pre-empt the sale."

(4) With utmost respect to the learned Single Judge, it appears to us, that, he overlooked the fact that under section 17-A(1), the sale of land comprising the tenancy of a tenant made to him by the landowner is not pre-emptible. Therefore, the parties to the sale which cannot be pre-empted are necessarily the landowner and the tenant. In this context, the sub-tenant does not come in. It is only the sale by the landowner to the tenant which is not pre-emptible, the implication being that there has to be a jural relationship of landowner and tenant. The vendee has to be a tenant of the vendor. There is no such relationship between the sub-tenant and the landowner. If the intention of the Legislature was to bring in the sub-tenant, they would have omitted the words "by the landowners" and "made to him". In that eventuality the section would have read: " a sale of land comprising the tenancy of a tenant made to him shall not be pre-emptible." But by bringing in the words "made to him by the landowner", the matter is taken beyond the pale of speculation.

As between the vendor and the vendee, there has to be a relationship of landowner and tenant. It is only such a sale which is immune from pre-emption. The sale to a sub-tenant does not make section 17-A applicable. Such a sale is not immune from pre-emption. If reference is made to section 17-B(1), this matter is further clarified. The contention of Mr. Sarin, learned counsel for the respondents, that a sub-tenant is covered by the expression "tenant", wherever this expression occurs in the Act, is wholly untenable. The context in which this expression is used will have to be seen before it can be held that the expression "tenant" includes a sub-tenant or not.

(5) Reference may now be made to the objects and reasons which led to the introduction of sections 17-A and 17-B into the main Act. This was done by the Punjab Security of Land Tenures (Amendment) Act, 1959 (Punjab Act No. 4 of 1959) which received the assent of the President on 4th January, 1959. In the objects and reasons, it is clearly stated as follows:—

> "It has come to the notice of Government that landowners, who are not competent to eject their tenants from lands comprising their tenancies under the Punjab Security of Land Tenures Act, 1953, are circumventing the provisions of that Act by executing *mala-fide* transactions of sales and mortgages with possession in respect of such lands in favour of the tenants. Subsequently such a sale is pre-empted under the connivance of the vendor (erstwhile landlord) and the pre-emptor takes possession of the land comprising the tenancy; likewise such a mortgage is redeemed by the mortgagor (erstwhile landlord) and in either case the tenant is deputed and deprived of his tenancy. Government have decided to safeguard the rights and interests of tenants against such *mala-fide* transactions; their tenancies will not be disturbed, and if these have been disturbed already, they will be restored to them by a summary procedure."

(6) The objects and reasons support the view we have taken of the matter. On principle also, we see no difference between the interpretation put on the word "tenant" in section 18 and the argument that the same interpretation should hold good so far as sections 17-A

and 17-B are concerned. In section 18 the expression used is "a tenant of a landowner" and if here the word "tenant" does not cover a "sub-tenant" surely when the expression used is "a sale of land comprising the tenancy of a tenant made to him by the landowner", the word "tenant" will not include a sub-tenant. Basically, all these three provisions have been enacted to safeguard a tenant *vis-a-vis* his landowner, a landlord. The sub-tenant can only take advantage of these provisions when, the tenant sells the land forming part of his tenancy to him, and not otherwise. But this cannot happen till the sub-tenant's landlord purchases the land from his landlord. The interpretation put by their Lordships of the Supreme Court in *Jaimal's case* (1), on expression "tenant", in our opinion equally applies to sections 17-A and 17-B. Their Lordships, while dealing with section 18, observed as follows:—

> "It will be noticed that before a person can apply under section 18 of the Act, he must be a tenant of a landowner other than a small landowner. There is no dispute that the landowner in this case is not a small landowner. The only question is whether the appellants, who were sub-tenants, can be said to be tenants of the landowner within the meaning of section 18. If we look at the definitions of the words "tenant" and "landowner", it seems clear that a tenant of a tenant cannot be a tenant of the landowner, because the definition expressly says that a landowner does not include a tenant. Apart from this, the first proviso to sub-section (1) of section 18 makes it clear that a tenant, who has sublet the land or a portion, as the case may be, to any other person during the period of his continuous occupation is disabled from applying under section 18 unless during the period of his continuous occupation the tenant was suffering from legal disability or physical infirmity or if a woman was a widow or was unmarried. In other words, for example, a tenant who is a widow would be entitled to apply under section 18 even though she had sublet the land which she desired to purchase. No satisfactory answer was given by the learned counsel for the the appellants as to what would happen if both the sub-tenant and the widow applied to purchase.
>
> Both sides have relied on the scheme of the Act, but it seems to us that the scheme of the Act and the objects underlying

the Act do not assist us in determining this question. It is well known that the main objects of the Act were to provide security to the tenants, settle tenants on land declared surplus and fix a ceiling on the total holding of landowners and tenants. It is also well known that it was a measure of agrarian reform. But these matters do not assist us in interpreting section 18.

The answer must depend upon the language of section 18 fairly construed. If it was intended that a sub-tenant should be entitled to purchase under section 18, we would have expected some provision in the Act to solve the difficulties which would arise if there was competition between the tenant and the sub-tenant.

There was some debate before us whether a tenant, who has sublet would be treated to be in continuous occupation of the land during the period of sub-tenancy within section 18(1)(i), but we think that the proviso to section 18(1) proceeds on the basis that the tenant is in continuous occupation even though he has sublet the land.

It will again be noticed that under the sub-section (4) (b) of section 18 on the purchase price being deposited, the tenant becomes owner of the land. If the contention of the appellant was correct, the sub-tenant would become the owner under sub-section (4) (b); but what will happen to the rights of the tenant ? No satisfactory answer was given to this question.

Again it will further be noticed that sub-section (5) of section 18 talks of the mortgage of the land, but it does not speak of the mortgage of the rights of a tenant.

It seems to us that the High Court was right in holding that the legislature did not intend to confer any rights under section 18 on the sub-tenant. The fact that by sub-letting the tenant is also not able to apply under section 18 by virtue of the first proviso to sub-section (1) cannot confer rights on the sub-tenant because he must himself be tenant of landowner within section 18 of the Act.

Mr. Chagla says that it is a very hard case for the appellants have been in possession for over 30 years, but if it is a hard case it is for the legislature to intervene and provide for such hard cases."

(7) For the reasons recorded above, we allow this appeal, set aside the judgment and decree of the learned Single Judge and restore that of the lower appellate Court. In view of the varying success in this litigation, we leave the parties to bear their own costs.

K. S. K.

APPELLATE CIVIL

Before S. S. Sandhawalia, J.

THE MALWA SUGAR FACTORY, DHURI,—*Appellant.*

versus.

BHAGWAN KAUR ETC.,—*Respondents.*

First Appeal from Order No. 169 of 1965.

March 18, 1971.

Workmen's Compensation Act (VII of 1923)—Sections 2(n) and 12(1)—Sub-contractor—Whether falls within the definition of "workman"—Injury caused to a sub-contractor during the execution of a work—Such injured sub-contractor—Whether entitled to compensation.

Held, that the plain language of section 2(n) of Workmen's Compensation Act, 1923, makes it manifest that a sub-contractor is not within the definition of workman and as such he is not entitled to any compensation for injury caused to him during the execution of a work. A sub-contractor cannot be brought within the ambit of the definition even with the aid of section 12(1) of the Act. This section only makes the principal liable to pay compensation to a workman employed by his contractor. As is patent it makes no reference to any sub-contractor at all. Moreover, section 12(1) uses the word "workman" for the person employed under the Contractor. This word must be construed in accordance with its definition given in section 2(n). One of the necessary requisites of the definition is that the person must be one employed on monthly wages. A sub-contractor is not employed on monthly wages and hence he is not a workman.

(Para 5).