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section 161, Criminal Procedure Code, it cannot be said at this stage that there are reasonable grounds for believing that they are not guilty of contravention of that rule.

(14) For the reasons given above, all these three petitions are allowed and the bail granted to the respondents is cancelled and they are ordered to be arrested and committed to custody. The respondents are ordered to surrender to their bail bonds. It is, however, directed that the decision of the cases against the respondents be expedited.

H.S.B.

APPELLATE CIVIL

*Before Prem Chand Jain and Rajindra Nath Mittal, JJ.*

SARDARA SINGH ETC.,—Defendants—Appellants.

*versus*

HAKAM SINGH ETC.,—Respondent.

Regular Second Appeal No. 380 of 1971.

November 21, 1975.

*Punjab Land Revenue Act (XVII of 1887)—Sections 3(6), (7) and (8), 86, 88, 89 and 158—Lambardar not collecting land revenue—Whether a 'defaulter'—Land of such Lambardar sold to recover arrears of land revenue—Suit challenging the sale—Whether triable by a Civil Court—Purchase money not deposited within the prescribed period—Sale—Whether a nullity.*

*Held*, that if any amount as arrears of land revenues is due from a land owner and the same could not be recovered by any other processes, in the first instance, his holding in respect of which the arrear is due, is to be sold and thereafter his other property. The word 'defaulter' in the various sections has been used for the land owner from whom the arrears of land revenue are actually due. There is no provision in the Punjab Land Revenue Act from which it can be inferred that the word 'defaulter' would include a Lambardar. A 'defaulter' is a person who is liable for arrears of land revenue and a Lambardar as such cannot be held to be liable for payment of arrears of land revenue of the land owners in the estate/portion of the estate of which he is a Lambardar and is therefore not included in the definition of the term 'defaulter'. Even after the amendment of the

definition of the word 'defaulter' by the Punjab Land Revenue Amendment Act 1974, the Legislature has not included the Lambardar who has not collected land revenue in the definition. Thus a Lambardar who has not collected land revenue is not a 'defaulter' within the meaning of this term.

(Paras 15, 16 and 17)

*Held*, that section 158 of the Act deals with the exclusion of jurisdiction of Civil Courts and clauses (xiv) and (xv) of sub-section (2) of the said section would apply only if a Lambardar had been liable to pay arrears of land revenue. Since he is not so liable, the revenue authorities have no jurisdiction to recover the amount from him. If the property of such a Lambardar is sold by the revenue authorities to recover the said arrears, the sale is without jurisdiction and he has a right to file a suit in the Civil Court which has the jurisdiction to decide the matter. It is an established principle of law that if the act of the authorities under any Act is without jurisdiction, then the jurisdiction of the Civil Court is not excluded. Thus where the property of Lambardar who has not collected land revenue is sold to recover the arrears and a suit is filed challenging the sale, the same is triable by a Civil Court.

(Para 23)

*Held*, that as required by section 88 of the Act full amount of the purchase money shall be paid by the purchaser before the close of the 15th day from that on which the purchaser was so declared, and according to Section 89, if default takes place in payment of full amount of purchase money within the period specified, the deposit referred to in section 85 of the Act, after defraying the expenses of the sale, is to be forfeited to the Government and the property resold. These provisions are mandatory and upon non-compliance with these provisions there is no sale at all. Non payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity.

(Para 24)

*Case referred by the Hon'ble Mr. Justice Prem Chand Pandit,—* vide his order dated 25th May, 1972 to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice Rajindra Nath Mittal finally decided the case on 21st November, 1975.

*Regular Second Appeal from the decree of the Court of Shri O. P. Singla, Senior Sub-Judge, with Enhanced Appellate Powers, Ferozepore, dated 19th February, 1971, reversing that of Shri G. S. Mann, Sub-Judge III Class, Ferozepore, dated the 21st August, 1967, and decreeing the suit of the plaintiff for possession of land against the respondents with no order as to costs throughout.*

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K. L. Sachdev, Advocate, *for the appellants.*

M. M. Punchhi, Advocate with Suresh Amba, Advocate, *for the respondents.*

### JUDGMENT

Mittal, J.—This regular second appeal has been filed by the defendants against the judgment and decree of the Senior Subordinate Judge, Ferozepore, dated February 19, 1971.

(2) Briefly, the case of the plaintiff was that Narain Singh was a Lambardar of village Hazarasinghwala in district Ferozepore. He himself was residing in another village. Therefore, Hardit Singh had been appointed as a substitute Lambardar for him. The said Hardit Singh was removed on November 8, 1957 and Sardara Singh, son of Dharam Singh, the plaintiff, was appointed as such in his place. It is alleged by Sardara Singh that in fact he did not work as a substitute Lambardar and did not collect any land revenue. According to him, it was the Patwari of the village who was collecting and depositing the land-revenue though he used to obtain his thumb-impressions on several documents. It is stated by him that the arrears of land-revenue went up to Rs. 40,000. He was challaned under section 409, Indian Penal Code, for criminal breach of trust in respect of the aforesaid amount. The Judicial Magistrate, Ferozepore, acquitted him on February 22, 1965. In the meantime, he states he made representations to the authorities for settling the accounts by demanding receipts from the defaulters in proof of their having paid the land-revenue. The authorities did not take any action on his representations. His land, on the other hand, was auctioned on the ground that an amount of Rs. 12,635.40 was due from him on January 18, 1965, for a consideration of Rs. 11,780. It was purchased by defendants 2 to 6. The sale was confirmed on February 31, 1966, by the Commissioner.

(3) According to the plaintiff, he was not a defaulter in respect of the payment of the land-revenue and, therefore, the proceedings for recovery of arrears of land-revenue by a sale of his property were illegal and without jurisdiction. He further alleged that the auction of the land had not been conducted in accordance with law and a number of irregularities had been committed therein and, therefore, it was not binding on him. He consequently instituted a suit for permanent injunction against the Punjab State and other defendants

praying that the defendants be restrained from taking possession of the land in dispute.

(4) The suit was resisted by the defendants who, *inter alia*, pleaded that the Civil Court had no jurisdiction to try the suit in view of the provisions of section 158 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the Act), that the plaintiff was a defaulter and that the sale of the property in dispute was valid. Defendants 2 to 6 also pleaded that they had paid the price in full for the property. Consequently, they had become full owners thereof.

(5) The trial Court held that the plaintiff was a duly appointed Sarbrah Lambardar, that he was a defaulter with regard to the arrears of land-revenue, that the Civil Court had no jurisdiction and that the sale of land in dispute in favour of defendants Nos. 2 to 6 was not fraudulent or illegal. Consequently, it dismissed the suit.

(6) The plaintiff Sardara Singh went up in appeal before the Senior Subordinate Judge, Ferozepore, against the judgment of the trial Court. Sardara Singh died during the pendency of the appeal and his legal representatives were substituted in his place as appellants. The appellants, in view of the fact that defendants 2 to 6 took possession of the land in dispute after the decision of the suit, amended the plaint with the permission of the Court and made a prayer for possession of the land. The learned Senior Subordinate Judge held that Sardara Singh deceased was not a defaulter, that the sale in favour of defendants Nos. 2 to 6 was fraudulent and illegal and that the Civil Court had jurisdiction to try the suit. He, however, affirmed the findings of the trial Court to the effect that he was appointed a Sarbrah Lambardar and that his duties were to collect the land-revenue. He consequently accepted the appeal, set aside the judgment and decree of the trial Court and decreed the suit. Defendant Nos. 2, 3 and 5 have come up in appeal against the judgment and decree of the first appellate Court to this Court.

(7) The case came up before Pandit J., who referred it to a Division Bench. That is how the case is before us.

(8) The first question that arises for determination in this appeal is whether Sardara Singh deceased was a defaulter within the meaning of section 3(8) of the Act. In order to determine this question it is necessary to refer to some of the provisions of the Act. The

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words 'land-revenue', 'arrear of land-revenue' and 'defaulter' have been defined in clauses 6, 7 and 8 of section 3 of the Act as follows:—

- "(6) 'land-revenue' includes assigned land-revenue and any sum payable in respect of land by way of quit-rent or commutation for service, to the Government or to a person to whom the Government has assigned the right to receive the payment;
- (7) 'arrear of land-revenue' means land-revenue which remains unpaid after the date on which it becomes payable.
- (8) 'defaulter' means a person liable for an arrear of land-revenue, and includes a person who is responsible as surety for the payment of the arrear, and a village officer who collects land revenue or any other sum recoverable as land revenue and does not pay the same to the State Government in accordance with the rules framed under the Act."

Clause (6) shows that the definition of 'land-revenue' is not exhaustive. According to clause (7), the land-revenue which remains unpaid after the date on which it is payable, becomes the arrear of land-revenue. It is significant to note that the word 'unpaid' had been used in the definition clause. The primary responsibility of payment of land-revenue is on the person who is the owner of the land and he is liable to pay the same.

(9) The Financial Commissioner, under section 63 of the Act, is authorised to fix the number and amount of the instalments, and the times, places and manners, by, at and in which land-revenue is to be paid. In paragraph 502 of the Land Administration Manual by Sir James Mc C. Douie (hereinafter referred to as the 'Manual'), it is stated that instalments are now arranged so as to become payable shortly after the garnering of the crops. The number, dates and amounts of the instalments are fixed at settlement with the approval of the Financial Commissioner, and are often identical for all the estates in a tahsil. It is further stated therein that if experience shows clearly that the arrangements originally made are unsuitable for any estate, or group of estates, the Deputy Commissioner should not hesitate to ask to have them changed. It is not disputed before us that the dates are fixed for making payments of the amounts of land-revenue.

(10) In clause (8) of section 3 of the Act, the words which have been underlined, have been added by the Punjab Land Revenue (Amendment) Act, 1974. I shall deal with the question as to why the amendment has been made in the aforesaid definition, at a later stage. It is, however, an admitted case of the parties that the Lambardar is not a surety for the payment of arrears of land-revenue. The contention of the learned counsel for the appellants is that the Lambardar is liable for the arrears of land revenue in the same way as the landowner is.

(11) Chapter III of the Act deals with the provisions relating to Kanungos, Zaildars, Inamddars and Village Officers. Section 28(1), which is in this Chapter, authorises the State Government to make rules to regulate appointment, duties, emoluments, punishment, suspension and removal of Kanungos and Village Officers. 'Village-Officers' has been defined in clause (11) of section 3 and the term includes a headman. I shall deal with the relevant rules in the later part of the judgment.

(12) Chapter VI starts with section 61 and ends with section 96. It relates to collection of land-revenue. Section 61 is regarding security for payment of land-revenue. Sub-section (1) of this section is as follows:—

“61(1) In the case of every estate, the entire estate and the landowner or, if there are more than one, the landowners jointly and severally, shall be liable for the land-revenue for the time being assessed on the estate:

Provided that.....”

Section 62 deals with further security for payment of land-revenue, section 63 with orders to regulate payment of land-revenue and section 64 authorises the Financial Commissioner to make rules to regulate collection, remission and suspension of land-revenue. The Financial Commissioner has framed rules under the aforesaid section. Sections 67 to 77 deal with the process for recovery of arrears of land-revenue. Section 67 is as follows:—

“67. Subject to the other provisions of this Act, an arrear of land-revenue may be recovered by any one or more of the following processes, namely:—

- (a) by service of writ of demand on the defaulter;
- (b) by arrest and detention of his person;

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- (c) by distress and sale of his moveable property and uncut or ungathered crops;
- (d) by transfer of the holding in respect of which the arrear is due;
- (e) by attachment of the estate or holding in respect of which the arrear is due;
- (f) by annulment of the assessment of that estate or holding;
- (g) by sale of that estate or holding;
- (h) by proceedings against other immovable property of the defaulter."

The process for recovery provided in clauses (a) to (h) have been dealt with in detail in sections 68 to 77. Sections 79 to 96 relate to procedure in sales.

(13) Chapter VII is regarding recovery of other demands by revenue-officers. There are only three sections in this chapter, namely, sections 97, 98 and 99. Section 97 deals with the recovery of certain arrears through Revenue-Officer instead of suit, section 98, with other sums recoverable as arrears of land-revenue and section 99 with application of Chapter VI to sums recoverable under Chapter VII. Section 97 is as follows:—

"When a village officer required by rules under section 28 to collect any land-revenue or sum recoverable as an arrear of land revenue satisfies Revenue Officer that the revenue or sum has fallen due and has not been paid to him, the Revenue Officer may, subject to any rules which the Financial Commissioner may make in this behalf, recover it as if it were an arrear of land revenue.

Section 98(e) authorises the Government to recover sums payable to the Government by a person who is surety for the payment of any of the sums mentioned in the other clauses of the said section, as arrears of land-revenue. Under section 99, the provisions of Chapter VI have been made applicable to the extent to which they can be made applicable for the recovery of sums referred to in Chapter VII,

as if those sums were arrears of land revenue and the persons from whom the amounts were due, were defaulters in respect of such arrears.

(14) Section 158 excludes the jurisdiction of the Civil Courts in matters which are within the jurisdiction of the revenue officers.

(15) A reading of section 61 shows that the liability to pay the land revenue is cast jointly and severally on all the landowners in the estate. No specific liability has been put on the Lambardar to pay land-revenue due from other owners in the estate. His liability in terms of section 61 is as one of the owners in the estate. In the present case, it is admitted by the learned counsel for the parties that the recovery was not sought to be made from Sardara Singh deceased under section 61 of the Act. In clauses (a), (b), (c), and (h) of section 67, specific mention has been made of the defaulter, whereas in the other clauses, the word 'defaulter' has not been mentioned. Clause (d) deals with transfer of the holding in respect of which the arrear is due; clause (e), with the attachment of the estate or holding in respect of which the arrear is due; clause (f), with the annulment of the assessment of that estate or holding, and clause (g), with the sale of that estate or holding. Sections 71, 72, 73 and 75 deal in detail with the aforesaid clauses, namely, (d), (e), (f) and (g). In section 71, it is stated that at any time after an arrear of land-revenue has accrued on a holding, the Collector may transfer the holding to any person being a land-owner of the estate in which this holding is situate and not being a defaulter in respect of his own holding, on condition of his paying the arrear before being put in possession of the holding. The transfer may be either till the end of the agricultural year in which the defaulter pays to the transferee the amount of the arrear which the transferee paid before being put in possession of the holding, or for a term not exceeding fifteen years from the commencement of the agricultural year next following the date of the transfer. It is further stated that a transfer under this section shall not affect the joint and several liability of the land-owners of the estate in which it is enforced, and that the person to whom the holding is transferred shall, subject to the conditions of the transfer, stand in the same position as that in which the defaulter would have stood if the holding had not been transferred. In the end it is stated that when the transfer was for a term, the holding shall, on the expiration of the term, be restored by the Collector to the defaulter free of any claim on the part of the Government or the



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transferee for any arrear of land-revenue or rates and cesses due in respect thereof. Section 72(1) says that at any time after an arrear of land-revenue has accrued, the Collector may cause the estate or holding in respect of which the arrear is due to be attached and taken under his own management or that of an agent appointed by him for that purpose. Sub-section (4) of this section provides that land shall not be attached for the same arrear for a longer term than five years from the commencement of the agricultural year next following the date of attachment, but, if the arrear is sooner discharged, the land shall be released and the surplus receipts, if any, made over to the land-owner. Section 73 deals with annulment of assessment of estate or holding and according to it, when an arrear of land-revenue has been due for a longer period than one month, and the foregoing processes are not deemed sufficient for the recovery thereof, the Financial Commissioner may, in addition to or instead of all or any of those processes, order the existing assessment of the estate or holding in respect of which the arrear is due to be annulled. Section 75 relates to sale of estate or holding, and it says that when an arrear of land-revenue has accrued and the foregoing processes are not deemed sufficient for the recovery thereof, the Collector with the previous sanction of the Commissioner, may, in addition to, or instead of, all or any of those processes, and subject to the provisions hereinafter contained, sell the estate or holding in respect of which the arrear is due. Section 77 relates to proceedings against other immoveable property of defaulter. The aforesaid section is as follows:—

“77. (1) If the arrear cannot be recovered by way of the processes herein-before provided, or if the Commissioner considers the enforcement of any of those processes to be inexpedient, the Collector may, where the defaulter owns any other estate or building, or any other immovable property, proceed under the provisions of this Act against that property as if it were the land in respect of which the arrear is due :

Provided that no interest save those of the defaulter alone shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of his interests being proceeded against.

(2) When the Collector determines to proceed under this section against immovable property other than the land in

respect of which the arrear is due, he shall issue a proclamation prohibiting the transfer or charging of the property.

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- (5) In proceeding against property under this section the Collector shall follow, as nearly as the nature of the property will admit, the procedure prescribed for the enforcement of process against land on which an arrear of land-revenue is due."

A joint reading of the aforesaid sections clearly shows that if any amount as arrear of land-revenue is due from a landowner and the same could not be recovered by any other processes, in the first instance, his holding in respect of which the arrear is due, is to be sold and thereafter his other property. It is also clear that the word 'defaulter' in the various sections has been used for the landowner from whom the arrears of land revenue are actually due. It cannot be inferred from the said sections that the word 'defaulter' would include a Lambardar. My attention has not been drawn to any section from which it could be inferred that the Legislature intended to include a Lambardar within the meaning of the word 'defaulter'.

(16) Section 97, as stated above, is a part of Chapter VII, which deals with recovery of other demands by revenue officers. According to this section, if the Village Officer, who is required by the rules under section 28 to collect any land-revenue or sum recoverable as an arrear of land-revenue satisfies revenue officer that the revenue or sum has fallen due and has not been paid to him, the revenue officer can recover it as if it were an arrear of land revenue. Rule 20 of the Land Revenue Rules, relates to the duties of the headman, wherein it is provided that in addition to other duties, he shall collect by due date all land revenue and all sums, recoverable as land revenue from the estate, or sub-division of an estate in which he holds office, and pay the same personally or by revenue money order or by remittance of currency notes through the post or at places where treasury business is conducted by the Imperial Bank of India, by cheque on a local bank at the place and time appointed in that behalf to the revenue officer or assignee empowered by Government to receive it. A reading of the aforesaid section with the rule also does not show that a

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Lambardar is personally liable to pay the amount which is due from a landowner as arrears of land revenue. The learned counsel for the appellants sought to argue that in Rule 20, the words "and to pay the same personally" have been used by which his liability to pay personally can be safely inferred. I regret my inability to accept the same. If the words are read in the context, these show that a Lambardar has to deposit the amount collected by him either personally or by sending the same by revenue money order or by remittance of currency notes through the post, or in certain circumstances, by cheque on a local bank. It is an established principle of law that the sections are to be read and construed harmoniously. In case all the aforesaid sections are read together, it is evident that the word 'defaulter', as defined prior to the Punjab Land Revenue (Amendment) Act, 1974, did not include a Lambardar. The definition says that the 'defaulter' is person who is liable for arrears of land revenue. A Lambardar, as such, cannot be held to be liable for payment of revenue of landowners in the estate/portion of the estate, of which he is a Lambardar and is, therefore, not included in the definition of the term 'defaulter'.

(17) I also get support in the aforesaid view from the fact that the definition of the word 'defaulter' was amended by the above-mentioned Amendment Act and the words "a Village Officer, who collects land revenue or any other sum recoverable as land revenue, and does not pay the same to the State Government in accordance with the rules framed under this Act" were included in the definition clause of the word 'defaulter'. In the Statement of Objects and Reasons, for the aforesaid amendment, it is mentioned that the headman of a revenue estate is responsible for collecting land revenue from all landowners in the estate and to deposit it into the Government treasury. There have been occasions when Lambardars collected the land revenue due from some landowners but failed to deposit it into the treasury. In such cases proceedings were initiated against them under section 69 of the Punjab Land Revenue Act. However, the High Court has observed in a recent case in *S. Sarup Singh v. The Collector Hissar and others* (1) that sections 97, 98 and 99 of the Punjab Land Revenue Act, apply to the recovery of the land revenue or sums recoverable as arrears of land revenue from the defaulters and do not apply to the Lambardars because the definition of the term 'defaulter' as given in section 3(8) of the Act, does not include

(1) 1970 P.L.J. 313.

a Lambardar who acts as an agent of the State in collecting Government dues. It is further stated that for the aforesaid reasons, the definition of the term 'defaulter' in section 3(8) of the Act, needs amendment so as to include in the definition, a Lambardar who defaults in depositing the land revenue collected by him into the Government treasury. I may at this stage refer to the observations of Tuli, J. in *Sarup Singh's case* (supra), which are as follows:—

“From section 3(8) of the Punjab Land Revenue Act, it is evident that this definition relates to the land-owner from whom the land revenue is due or a person who is responsible as surety for the payment of land revenue. A Lambardar who has collected the land revenue but has not deposited the same in the Treasury, or the Lambardar who has not collected the land revenue from the land-owners, 'cannot be termed as "defaulter" as defined in sub-section (8) of section 3. Sections 97, 98 and 99 apply to the recovery of land revenue or sums recoverable as arrears of land revenue from the defaulters and do not apply to a Lambardar who has collected the land revenue but has not deposited in the Treasury, or who has not collected the land revenue. Rules 20, 64, 65 and 66 of the Punjab Land Revenue Rules made under the said Act also do not lead to the conclusion that a Lambardar who has collected the land revenue but has not deposited in the Treasury, or who has not collected the land revenue can be proceeded against as a defaulter under the said Act or the Rules. A Lambardar while collecting the land revenue acts as an agent of the State Government and he can be proceeded with civilly or criminally if he has collected the land revenue but has not deposited the same in the Government Treasury, but he cannot be proceeded with as a defaulter under the Punjab Land Revenue Act or the Rules framed thereunder. He cannot be held liable for the payment of the land revenue which he has not collected from the landowners as no statutory provision either of the Act or the Rules mentioned above, holds the Lambardar liable for land revenue which has not been collected by him. Section 68 of the Act provides for the issue of a warrant for the arrest of a defaulter and since the Lambardar was not a defaulter as defined in section 3(8) of the Act, no warrant could be issued against him under that section.”

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The Legislature thereafter amended the definition of the term 'defaulter' and included in it 'a village officer who collects the land revenue or any other sum recoverable as land revenue, but does not pay the same to the State Government in accordance with the Rules made under the Act.' The addition of the aforesaid phraseology shows that though it was held by the learned Judge that even a Lambardar, who had not collected the land revenue, was not a defaulter, yet the Legislature in its wisdom did not consider it proper to include Lambardar who had not collected the land revenue in the definition of the word 'defaulter'.

(18) The learned counsel for the appellants has made reference to some of the paras of the Land Administration Manual and the Rules framed under the Act. Especially reference has been made by him to paragraph 516 which relates to the meaning of the word 'defaulter'. It is mentioned in the aforesaid paragraph that in practice, the milder coercive processes are directed either against the owner of the holding in respect of which the default arises or against his headman. A similar view has been expressed by the author in paragraphs 521 and 522. These are the views of the author or might be the practices in the Department. These views or the practices have not the support of the provisions of the Act. No doubt the views expressed by Mr. Douie are treated with great respect, but these cannot take the place of provisions of the Act. If the views of the learned author are in contravention of such provisions, the same can be ignored to that extent.

(19) Mr. Sachdeva, the learned counsel for the appellants, has referred to Rules 64, 65, 66, 67 and 68 of the Punjab Land Revenue Rules. Rule 64 relates to the application of headman for recovery of arrears from the defaulter under section 97 of the Act, Rule 65, to summoning of the defaulter; Rule 66, to recovery of arrears from the defaulter and Rule 67, to bail of the defaulter under detention. From the aforesaid Rules no inference can be drawn that a Lambardar is a defaulter or that recovery can be made from his property. Rule 68 deals with the circumstances under which defaulter is liable to detention or imprisonment for arrears. It is stated in this Rule that no defaulter shall be detained under section 69(2) of the Act or confined under section 69(3) for an arrear unless it is due from himself or from a co-proprietor of whom he is the representative village headman; nor shall any defaulter be imprisoned for an arrear due before he came into possession or office. The Rule no doubt authorises the revenue officer to detain a Lambardar in case any landowner

from whom he has to collect the land revenue has not paid the same. The Rule talks of a milder process. The Act, however, does not provide that a rule can be framed under it by which such liability can be fixed on a Lambardar. It is true that it is the duty of the Lambardar to collect the land revenue and deposit the same in the treasury. It, however, cannot be held on the basis of the paragraphs in the Land Administration Manual or in the Rules that the Lambardar, who has not collected the land revenue, falls under the definition of the word 'defaulter'. The opinion of the author is of great value, but it cannot be the guiding principle for interpreting the Act. Therefore, the learned counsel for the appellants cannot derive any benefit either from the Manual or from the Rules.

(20) Mr. Sachdeva, learned counsel for the appellants, then referred to *Kirpal Singh v. The Collector, Ferozepur* (2) and *Gurbakhsh Singh v. The Deputy Commissioner, Amritsar* (3). In both these cases it has been held that the Lambardar, who collects the land-revenue from the rightholders and does not deposit the same, is a defaulter within the meaning of section 3(8) of the Act. He has also cited *Gurmukh Singh and others v. The State of Punjab and others* (4) and *Naunihal Singh v. Janga Singh alias Jang Singh and others* (5). The former case was decided before the amendment of the definition of the word 'defaulter' while the latter, after that amendment. In both the cases it has been held that the word 'defaulter' does not include a person who has misappropriated or embezzled Government money or the money that he had collected on behalf of the Government. All the aforesaid cases are distinguishable on facts from the present case and the appellants cannot derive any benefit from them.

(21) The learned counsel for the respondents has mainly placed reliance on *S. Sarup Singh's case* (supra). The observations made therein have already been reproduced above. In my view, the word 'defaulter' has been correctly interpreted in that case. I am in respectful agreement with the observations of the learned Single Judge.

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(2) 1963 P.L.J. 87.

(3) 1967 P.L.J. 168.

(4) 1971 P.L.J. 167.

(5) (1975) 77 P.L.R. 492,

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(22) The learned counsel for the appellants, faced with the aforesaid difficulty, sought to challenge the judgment of the first appellate Court on the ground that Sardara Singh deceased had recovered land revenue from the landowners and had not deposited the same. In support of his contention he has referred to the statement of Sardara Singh deceased dated May 29, 1956, Exhibit D/4, wherein he stated that he would be personally liable to pay the land revenue. He has also referred to a personal bond of Sardara Singh deceased, dated August 22, 1962 (Exhibit D/8) wherein he admitted that he was liable to pay Rs. 11,500 which he would pay within 15 days and in case he failed to do so, he would pay Rs. 1,000 as damages. He also referred to the statement of Santokh Singh, Wasil Baqi Nawis D.W. 1, but he could not point out in his statement that Sardara Singh deceased had made recovery of the amount and had not deposited the same. From the aforesaid evidence it cannot be held that the deceased had recovered the amount of land revenue from the landowners. In the circumstances, I reject this contention of the learned counsel for the appellants and hold that Sardara Singh deceased was not a defaulter within the meaning of section 3(8) of the Act.

(23) The next question arises for determination is whether the suit is triable by the revenue Court, in case Sardara Singh deceased was not a defaulter. Section 158 of the Act deals with the exclusion of jurisdiction of Civil Courts. Clauses (xiv) and (xv) of sub-section (2) of the said section are relevant for the determination of the said question and are as follows:—

“158(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely—

*	*	*	*	*
*	*	*	*	*
*	*	*	*	*

(xiv) any claim connected with, or arising out of the collection by the Government, or the enforcement by the Government of any process for the recovery of land-revenue or any sum recoverable as an arrear of land-revenue;

(xv) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land-revenue or any sum recoverable as an arrear of land-revenue.”

The aforesaid clauses would have applied if Sardara Singh deceased had been liable to pay the said arrears. He, as already held above, was not liable to pay any arrears of land-revenue. In these circumstances, the revenue authorities had no jurisdiction to recover the amount from him. As his property had been sold by the revenue authorities without jurisdiction, he had the right to file a suit in the Civil Court and it had the jurisdiction to decide the matter. It is an established principle of law that if the act of the authorities under any Act is without jurisdiction, then the jurisdiction of the Civil Court is not excluded. In my view, the Civil Court had the jurisdiction to try the present controversy. The learned counsel for the appellants has placed reliance on a decision of Peshawar Judicial Commissioner's Court in *Raja Safdar Jang v. Kazi Mohd. Azam and another*, (6). In that case, the property of the person from whom the arrears of land revenue were due, was sold. He instituted a suit for a declaration in the Civil Court that he was the owner of the properties and the sales were irregular and invalid. The facts of that case are materially different than the facts of the present case. In my view, the observations in that case have no applicability to this case. The learned counsel for the appellants has also relied on the observations of the learned Judge in *Naunihal Singh's case* (supra) to the effect that all the provisions of the Act, when read together, provide remedies to save the land from being sold for recovery of land-revenue, but when such sale is confirmed, it becomes final and cannot be challenged in a Civil Court on any ground other than the fraud. In that case the land was sold on the ground that the Lambardar had failed to deposit the land revenue which he had collected from the landowners. The said case, as already mentioned above, had been decided after the amendment of the definition of the word 'defaulter'. In my view, the aforesaid observations will not be applicable to the facts of the present case. In the circumstances stated above, I am of the view that the suit is triable by a Civil Court.

(24) The last question that arises for determination is, whether the sale was a nullity as the purchasers failed to deposit seventy-five per cent of the purchase money within the period prescribed by law? The property was auctioned on January 15, 1965, and twenty-five per cent of the sale price was paid on the same day in terms of section 85. The balance amount was not deposited within 15 days from the date of sale as required by section 88 of the Act. Section 88 says that

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(6) (1965) 218 Indian Cases 195.



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full amount of the purchase-money shall be paid by the purchaser before the close of the 15th day from that on which the purchaser was declared. According to section 89, if default takes place in payment of full amount of purchase-money within the period mentioned in section 88, the deposit referred to in section 85, after defraying the expenses of the sale, is to be forfeited to the Government and the property resold. Section 85, 88 and 89 are *pari materia* with Order 21, Rules 84, 85 and 86 of the Civil Procedure Code, respectively. The Supreme Court, in *Manilal Mohanlal Shah and others v. Sardar Sayed Ahmed Sayad Mahmad and another*, (7) has held that if the price is not paid as required by Order 21, Rules 84, 85 and 86, the sale is a nullity. The observations of Ghulam Hasan J., speaking for the Court, are as follows:—

“The provisions of Order 21, Rules 84, 85 and 86 requiring the deposit of 25 per cent of the purchase-money immediately, on the person being declared as a purchaser, such person not being a decree-holder, and the payment of the balance within 15 days of the sale, are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a stranger purchaser without depositing 25 per cent of the purchase-money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property (Rule 86) in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law.”

A similar matter also came up for decision before this Court in *Ganga Singh v. The State of Punjab and others*, (8). That case was under the Act. R. S. Narula, J., as my Lord the Chief Justice then was, following the observations of the Supreme Court, held that the consequences that follow non-payment of balance of the bid money within the prescribed time in the case of sale under Order 21, Rule 86

(7) A.I.R. 1954 S.C. 349.

(8) 1968 P.L.R. 395.

of the Code of Civil Procedure, also follow in the case of non-payment of the entire balance within 15 days in case of the sale under the Act as provided by section 89 thereof. The learned Judge further held that there is no material difference between the language of Rule 86 of Order 21 of the Code and that of section 89 of the Act. The above observations fully apply to the present case. Admittedly, in the present case, 75 per cent of the amount was not deposited within the period prescribed by section 88. In the aforesaid situation, the sale is a nullity. In case, it is so, the Civil Court has the jurisdiction to decide the matter.

(25) For the reasons recorded above, I do not find any merit in the appeal and dismiss the same with no order as to costs.

Prem Chand Jain, J.—I agree.

N.K.S.

REVISIONAL CRIMINAL.

Before Pritam Singh Pattar, J.

THE STATE,—Petitioner.

*versus*

PHULA, SON OF SHANKER SINGH,—Respondents.

Reported Criminal Revision No. 62 of 1975.

December 1, 1975.

*Code of Criminal Procedure (2 of 1974)—Sections 209, 228(1)(a) and 484(2) Proviso—Commitment proceedings under the old code pending for an offence triable by a Court of Sessions—New Code coming into force during such pendency—Such offence triable by a Magistrate under the new Code—Magistrate—Whether should try the offence himself—Magistrate committing the accused after coming into force of the new Code—Sessions Judge—Whether should transfer the case to the Magistrate under section 228(1)(a).*

*Held*, that when for an offence triable by the Court of Session the committal proceedings under the Code of Criminal Procedure 1898 were pending before the Judicial Magistrate on the date, when the new Code of Criminal Procedure 1973 came into force, the Magistrate