(8) It was next contended by the learned counsel for the State that the petitioner is debarred from filing this petition as he has accepted the order of dismissal by seeking re-employment. I am afraid there is no substance in this contention. There is no evidence on the record to show that the petitioner had accepted the impugned orders Annexures 'A' and 'B' to be correct. The circumstances under which the petitioner accepted the post on 3rd March, 1967, as stated in the petition, although controverted in the return, show that the petitioner had been all the time thinking that under the orders of the then Transport Minister, he had been reinstated and it was not a case of re-employment. The petitioner has all along been challenging the validity and legality of the termination order and the petition cannot be dismissed on the ground of acquiescence.

(9) The contention of the learned counsel that the petition should be dismissed as it suffers from laches too is not tenable. The circumstances as explained in the petition clearly show that the petitioner was not guilty of laches because he had been pursuing his further remedy and by the then Transport Minister, he was given to understand that some relief was going to be given to him. Otherwise also in the view which I have taken on the merits, I am not going to dismiss this petition on the ground of laches.

(10) No other point has been urged.

(11) In this view of the matter I allow this petition and quash the orders Annexures 'A' and 'B' . I further direct that the petitioner remains employed as a Conductor in the Department as if his services were not terminated. The petitioner will have his costs from the respondents.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MANI RAM AND OTHERS,—*Petitioners*

versus

FINANCIAL COMMISSIONER, HARYANA, AND ANOTHER,—*Respondents*

Civil Writ 1077 of 1967

November 25, 1968

Punjab Security of Land Tenures Act (X of 1953)—Section 2(3)—Displaced person allotted less than fifty standard acres of land—Such land—Whether to be re-evaluated for declaring any part of it as surplus.

Held, that from the definition of "surplus area" in section 2(3) of Punjab Security of Land Tenures Act, 1953, it is clear that in the case of a displaced person who has been allotted land in excess of thirty standard acres but less than fifty standard acres, the permissible area shall be equal to his allotted area. The object of giving higher area of land to displaced persons as compared to the local land-owners was that displaced land-owners had suffered heavily on account of partition and a cut had already been applied to their holdings when they were allotted land in India in lieu of the lands left in Pakistan and for this reason the area allotted should not be further reduced. The intention was that if any land-owner had been allotted an area of less than fifty standard acres, he should be allowed to retain area and the same should not be curtailed under any provision of the Act. It is nowhere provided in the Act that the land of a displaced person will be evaluated under the Act in cases where the original allotment was of less than fifty standard acres. In the absence of such a provision in the Act, the land of a displaced person who was allotted less than fifty standard acres in area is not to be re-evaluated on coming into force of the Act for purposes of declaring any part of it as surplus in his hands. (Para 5)

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of Certiorari, Mandamus *or any other appropriate writ, order or direction be issued that the orders, dated 12th October, 1965, 11th January, 1967 and 16th March, 1967 passed by the respondents be quashed and directing the respondent No. 2 not to eject the petitioners tenants.*

S. S. MAHAJAN, ADVOCATE, for the Petitioner.

B. S. WASU, ADVOCATE, FOR ADVOCATE-GENERAL.

L. S. WASU *and* H. S. WASU, ADVOCATES, for the Respondents.

JUDGMENT

TULI, J.—This judgment will dispose of three petitions, Civil Writ No. 1077 of 1967, (Mani Ram and others *vs.* The Financial Commissioner and another), Civil Writ No. 1320 of 1967 and Civil Writ No. 2957 of 1967 (Dal Sukh and others *vs.* The State of Haryana and others) as common questions of law and fact arise in all these petitions. Civil Writ No. 1077 and Civil Writ No. 1320 of 1967 are directed against the order of the Financial Commissioner, Haryana, dated 16th March, 1967, holding that there was no excess areo with Shrimati Budho Bai, respondent No. 2. Civil Writ No. 2957 of 1967 is directed against the order of the Financial Commissioner, Haryana, dated 24th October, 1967, holding that the petitioners in that writ petition, who are the tenants of Shrimati Budho Bai, are not entitled to purchase the land in their tenancy.

(2) Shrimati Budho Bai, respondent No. 2, is a displaced person from Pakistan and was allotted 43 standard acres $10\frac{3}{4}$ units of land in village Talwara Khurd in lieu of the land left in Pakistan. On the 15th of April, 1953, the date of commencement of the Punjab Security of Land Tenures Act, 1953 (hereinafter called the Act), the land was evaluated as 49.01 standard acres. It was contended by the petitioners, who are the tenants of Shrimati Budho Bai, that she was not a small land-owner on the 15th of April, 1953, when the Act came into force, as her permissible area was 43 standard acres $10\frac{3}{4}$ units which was allotted to her. The area in her possession on the 15th of April, 1953 was more than the permissible area which took her out of the category of small land-owners. She did not, admittedly, reserve any area on the ground that she was a small land-owner. Proceedings for declaring surplus area were taken and the Collector, Surplus Area, Sirsa, by order dated 12th October, 1965, declared 1.13 standard acres of land as surplus area. Shrimati Budho Bai filed an appeal against that order which was accepted by the Commissioner, Ambala Division on January 11, 1967. The petitioners filed a revision against the order of the learned Commissioner before the Financial Commissioner which was dismissed on 16th March, 1967.

(3) The petitioners also filed applications for the purchase of the lands under their respective tenancies which were ultimately dismissed by the learned Financial Commissioner, by order dated 24th October, 1967 on the ground that Shrimati Budho Bai was a small land-owner. Aggrieved from those orders the petitioners have filed these petitions in this Court.

(4) The only point arising for decision in the case is as to what area is Shrimati Budho Bai entitled as her permissible area. The facts are not in dispute, that is, she had been originally allotted 43 standard acres $10\frac{3}{4}$ units and when this land was evaluated, as on 15th April, 1953, the area worked out to 49.01 standard acres. The area did not increase because of any subsequent acquisitions made by Shrimati Budho Bai in any manner but because of the fact that by improvements and good husbandry, the yield from the lands became higher with the result that although physically the area of the land did not increase but notionally on the value of the yield, the land allotted to her became larger in area in standard acres. The learned Financial Commissioner has held that a land-owner cannot be penalized for having improved his land and the increase due to the land-owner's own efforts, without any addition

having been made to the land physically, the land-owner cannot be deprived of any part of the land. Permissible area has been defined in section 2(3) of the Act as under:—

2. In this Act, unless the context otherwise requires:—

(3) "Permissible area" in relation to a land-owner or a tenant, means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres—

Provided that :

(i) no area under an orchard at the commencement of this Act, shall be taken into account in computing the permissible area;

(ii) for a displaced person—

(a) who has been allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred ordinary acres, as the case may be;

(b) who has been allotted land in excess of thirty standard acres, but less than fifty standard acres, the permissible area shall be equal to his allotted area;

(c) who has been allotted land less than thirty standard acres, the permissible area shall be thirty standard acres, including any other land or part thereof, if any, that he owns in addition.

(5) From this definition it is clear that in the case of a displaced person who has been allotted land in excess of thirty standard acres but less than fifty standard acres, the permissible area shall be equal to his allotted area. The words "equal to his allotted area" are the key words which require interpretation. The object of giving higher area of land to displaced persons as compared to the local land-owners was that displaced land-owners had suffered heavily on account of partition and a cut had already been applied to their holdings when they were allotted lands in India in lieu of the lands left in Pakistan and for this reason the area allotted should not be further reduced. The intention was that if any land-owner had been allotted an area of less than fifty standard acres, he should be allowed to retain that

area and the same should not be curtailed under any provision of the Act. The evaluation of the land under the Act has to be made under section 19F(b) but this provision applies only in cases where the land has to be evaluated at any time under this Act. It is nowhere provided in the Act that the land of a displaced person will be evaluated under the Act in cases where the original allotment was of less than fifty standard acres. In the absence of such a provision in the Act, I am of the opinion, that the land of a displaced person who was allotted less than fifty standard acres in area is not to be evaluated on 15th April, 1953 for purposes of declaring any part of it as surplus in his hands. The orders passed by the learned Financial Commissioner are, therefore, correct and in accordance with the intention of the Act.

(6) Counsel for both the parties in each case have placed a strong reliance on a judgment of their Lordships of the Supreme Court in *Bhagwan Das* vs. *State of Punjab* (1), in which it was observed by Bachawat, J., (with whom Subba Rao, J., agreed) as under: —

> "On a reading of section 10-F(b), it would appear that for the purpose of determining the status of the land-owner and evaluating his land at any time under the Act, the land owned by him immediately before the commencement of the Act must always be evaluated in terms of standard acres as if the evaluation was being made on the date of such commencement. It is not disputed that if the land held by the appellant immediately before the commencement of the Act is so evaluated, the appellant would be a small land-owner. There is no scope for evaluating the subsequent improvements in the land due to consolidation operations or otherwise. The appellant did not acquire any land after the commencement of the Act. His status as a small land-owner was not altered by reason of subsequent improvements or re-allotments of land on compulsory consolidation of holdings. On the date of the application for eviction, he, therefore, continued to be a small land-owner. The High Court was in error in holding that the status of the appellant should be determined by evaluating his land in terms of standard acres on the date of the application for eviction."

(1) A.I.R. 1966 S.C. 1869.

Mudholkar, J., gave a separate but concurrent judgment. His Lordship observed :—

> "Where, as here, the landlord is a displaced person and the land allotted to him is less than fifty acres the permissible area so far as he is concerned would be the area actuallf allotted to him. In the case of the appellant it would thus be 42 standard acres and 11 units."

In that case the displaced landowner was allotted 42 standard acres 11 units of land in 1949 and this land on the date of the enforcement of the Act, that is, April 15, 1953, was stated to be equivalent to 42 standard acres 11 units. It appears that the area of the land in possession of the displaced landowner was not evaluated differently to that which was originally allotted to him. That fact, in my opinion, reinforces my conclusion given above that the land of a displaced person allotted to him, if less than fifty standard acres, has not to be evaluated for the purposes of the Act as on the 15th of April, 1953.

(7) For the reasons given above, there is no merit in the writ petitions which are dismissed but without any order as to costs.

K.S.K.

REVISIONAL CIVIL

Before Mehar Singh, C. J.

SMT. KIRPAL KAUR,—*Petitioner*

versus

BHAGWANT RAI,—*Respondent*

Civil Revision 734 of 1967

November 28, 1968

East Punjab Urban Rent Restriction Act (III of 1949)—Section 9—Increase of rent on levy of house-tax—Landlord—Whether entitled to—Application to Rent Controller for the purpose—Whether necessary—Such increase of rent—Whether operative earlier to the date of demand notice by the landlord.

Held, that it is apparent from the language of sub-section (1) of section 9 of East Punjab Urban Rent Restriction Act, 1949, that on the levy of house-tax after the commencement of the Act a landlord is entitled to increase in the rent to the amount of the house-tax. There is not one single word in this