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Before the G.S. Singhvi & Kiran Anand Lall, JJ.

PUNJAB STATE ELECTRICITY BOARD,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 4512 of 2002

29th August, 2002

*Constitution of India, 1950—Art. 226—Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973—S. 3—Public Premises—Leased out—Expiry of lease period—Request for extension of lease declined—fresh auction—Tenant continued to occupy premises on the basis of an order of Civil Court—Whether a tenant can claim legal right to retain possession of the shop after expiry of lease period simply because he had deposited an amount equivalent to monthly rent—Held, no—Amount deposited by the tenant during the pendency of litigation can be treated as an amount representing damages for unauthorised use and occupation of public premises—Petition allowed and tenant directed to hand over possession of the shop.*

*(Balkar Singh and another versus Commissioner Jullundur Division, Jullundur and another, 1989 P.L.R. 101 (D.B.) and Prem Chand versus Commissioner, Patiala Division and others, 1993 P.L.R. 277 (S.B.) held, do not lay down good law)*

Held that :

- (i) Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant which necessarily postulates positive consent of the landlord except when, in view of a special law, the consent of the landlord is not necessary.
- (ii) Litigious possession cannot be equated with lawful possession.
- (iii) A tenant of the public premises, who retains possession after expiration of the term of lease without the consent of the landlord, is a tenant-at-sufferance and he is liable to be evicted by adopting summary procedure.

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- (iv) The deposit of an amount equivalent to monthly rent by the erstwhile tenant/lessee after expiration of the term of lease represents damages for unauthorised use and occupation of public premises and acceptance thereof by the owner during the pendency of proceedings in a Court of law or before an authority constituted under the Act or otherwise cannot give rise to a presumption that the owner has agreed to revive the lease or create a new one in favour of the erstwhile tenant/lessee and the Court cannot protect such unauthorised possession of public premises.

(Para 17)

Kapil Kakkar, Advocate, *for the petitioner.*

Charu Tuli, Senior Deputy Advocate General, Punjab for respondents Nos. 1 to 3.

P.S. Jammu, Advocate for respondent No. 4.

### JUDGMENT

*G.S. Singhvi, J.*

(1) This petition is directed against orders Annexures P.3 dated 18th November, 1999 and P.4 dated 28th September, 2001 passed by Sub-Divisional Officer, Bhatinda and Deputy Commissioner, Bhatinda, exercising the powers of the Collector and Appellate Authority, respectively under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for short, 'the Act').

(2) At the out-set, we may briefly notice the facts necessary for deciding the issues raised in the petition.

(3) In the year 1991, the competent authority of the Punjab State Electricity Board (for short, 'the Board') held an auction for leasing out the shop situated within the premises of Guru Nanak Dev Thermal Plant at Bhatinda. Respondent No. 4—Jagjiwan Kumar gave the highest offer of paying monthly rent of Rs. 735. His offer was accepted and the said shop was leased out to him for a period of one year from 2nd May, 1991 to 1st May, 1992. On his request, the term

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of lease was extended for a period of one year ending in May, 1993. At the end of the extended term of lease, respondent No. 4 applied for further extension, but his request was declined and the shop was put to fresh auction. This time, Shri Sanjeev Kumar gave the highest bid and offered to pay rent at the rate of Rs. 1,065 per month. His bid was accepted by the concerned authority. However, possession of the shop could not be given to him because in the meanwhile, respondent No. 4 filed civil suit in the Court of Sub-Judge 1st Class, Bhatinda and succeeded in persuading the learned Presiding Officer to grant *ad interim* injunction against his dispossession. The suit was finally decreed and the petitioner was restrained from dispossessing respondent No. 4 without adopting due process of law. Appeal filed by the petitioner against the judgment and decree of the trial Court was dismissed by District Judge, Bhatinda. Thereafter, the petitioner filed an application under Section 3 read with Section 5 of the Act for eviction of respondent No. 4 on the ground that he was unauthorisedly occupying the public premises. Respondent No. 4 contested the application by asserting that even after the expiry of the extended term of lease, he was entitled to retain possession because he was prepared to pay the rent and in fact, the concerned authority had accepted that rent deposited by him from time to time.

(4) Shri Hukam Chand, Upper Division Clerk was examined in support of the application. He narrated the details of the auction held in 1991 and then stated that the application given by respondent No. 4 for extension of the lease was declined by the competent authority and the highest bid of Rs. 1,065 per month given by Shri Sanjeev Kumar in the auction held in 1993 was accepted. He also produced photostat copy of lease agreement, application dated 27th May, 1992 filed by respondent No. 4 for extension of lease (Ex. A.2), photo copy of noting portion whereby decision for re-auction was taken (Ex. A.3) and auction-sheet (Ex. A.4). Respondent No. 4 appeared in the witness-box and produced rent receipts marked as D.W. 3 to D.W. 27 and D.W. 49 to D.W. 57 and letters signed by the concerned authority for payment of rent marked as D.1, D.2, D. 32 to D. 47. He also produced copies of interim order and decree passed by the Civil Court. Copies of challans,—*vide* which rent was deposited in the treasury were produced as Ex. D. 58 to D. 67.

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(5) After hearing counsel for the parties, the Collector dismissed the application by recording the following observations :—

“The petitioner has admitted the giving of shop on rent to the respondent and has not produced any evidence regarding termination of lease. The plea that after the expiry of lease period, lease stood terminated does not seem to be justified whereas the respondent has produced the original receipts D.3 to D.27, D.49 to D.57 and the copy of the challan D.58 to D.67 and has established that the petitioner is receiving the rent continuously and by producing D.1, D.2, D.32 to D.47 has further proved that by writing letters the petitioner has made demand for their rent and accordingly after receiving rent from the respondent continuously, it is not justified to term his possession as unauthorised. The proceedings under P.P. Act against him for dispossession are also not justified. In these circumstances, the application of the petitioner is not correct and is not proved and as such the application of the petitioner is dismissed as the rent is being regularly received from the respondent.”

(6) Appeal filed by the petitioner was dismissed by the Appellate Authority which held that after having accepted the rent, the petitioner cannot treat respondent No. 4 as unauthorised occupant of public premises. The relevant extract of the appellate order is reproduced below :

“I have given my thoughtful consideration to the arguments put forward by the learned counsel for both the parties and have perused the record on file. The respondent filed an application for extension of lease period after the expiry of lease period. However, extension was not granted but the PSEB is gracefully accepting the rent. In view of the citation quoted by learned counsel for the respondent, the respondent cannot be said to be in unauthorised possession. The orders of the learned Commissioner, Faridkot Division, Faridkot dated 21st September, 1998 and Hon'ble Supreme Court of India dated 28th August, 2000, presented at the time of

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arguments further gives strength to my view on this point. Viewed in this context, I find no force in the present appeal and dismiss the same lacking merits.”

(7) Shri Kapil Kakkar argued that after expiry of the extended period of lease, respondent No. 4 had become an unauthorised occupant of the public premises within the meaning of Section 3 of the Act because his request for further extension of the term of lease was declined and the shop in question was put to auction and, therefore, the finding to the contrary recorded by the Collector and the Appellate Authority should be declared as vitiated by an error of law. He further argued that non-return of the rent deposited by respondent No. 4 after 7th May, 1993, i.e., the date of expiry of the extended period of lease did not have the effect of reviving the relationship of landlord and tenant between the Board and the said respondent so as to entitle him to retain possession of the shop. Shri Kakkar submitted that the amount deposited by respondent No. 4 after 7th May, 1993 represented the damages for unauthorised use and occupation of the public premises by him and the Collector and the Appellate Authority gravely erred in treating it as rent of the premises.

(8) Shri P.S. Jammu conceded that the extended term of the lease granted to respondent No. 4 had expired on 7th May, 1993. He further conceded that the request made by his client for extension of lease was declined and the shop in question was put to fresh auction but argued that he could not be treated as an unauthorised occupant of the public premises because the rent deposited by him was continuously accepted by the concerned officer of the Board and at times, written demand for rent was sent to respondent No. 4. Shri Jammu referred to order dated 17th February, 2000 passed by this Court in C.W.P. No. 1561 of 2000—**Punjab State Electricity Board versus Naresh Kumar**,—*vide* which the petitioner’s prayer for quashing orders dated 20th March, 1998 and 21st September, 1998 passed by the Collector and the Appellate Authority respectively on the application filed in the case of Naresh Kumar, who was occupying booth No. 12, was dismissed by this Court and order dated 28th August, 2000 passed by the Supreme Court in SLP (Civil) No. 12788 of 2000 and argued that in view of the dismissal of similar petition, the present petition should be dismissed.

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(9) We have thoughtfully considered the respective arguments and carefully perused the records of this petition and C.W.P. No. 1561 of 2000. A recapitulation of the facts brought on the record of this case shows that the term of the lease granted to respondent No. 4 in 1991 came to an end on 1st May, 1992. The extended period of lease ended on 7th May, 1993. The application filed by him for further extension of lease was declined and in the fresh auction held some time in May, 1993, Shri Sanjeev Kumar offered highest rent at the rate of Rs. 1,065 per month. His bid was accepted, but possession of the shop could not be given because respondent No. 4 obtained temporary injunction from the Court of Sub-Judge 1st Class, Bhatinda. The suit filed by him was decreed by the trial Court and the appeal filed by the petitioner was dismissed by District Judge, Bhatinda. It is, thus, clear that after 7th May, 1993, respondent No. 4 continued to occupy the premises on the basis of order and judgment/decreed passed by the court of competent jurisdiction and not in pursuance of extension of the term of lease, express or implied, granted by the competent authority of the Board. Therefore, mere deposit of an amount equivalent to monthly rent during the pendency of the proceedings before the Courts, the Collector and the Appellate Authority and non-return thereof by the concerned officer of the Board could not, in the absence of any overt-act on the part of the competent authority of the Board to recognise him as a tenant or a lessee, be made basis for recording a finding that respondent No. 4 was in lawful possession of the shop in question. As a logical corollary to this conclusion, we hold that respondent No. 4 had become an unauthorised occupant of the public premises with effect from 7th May, 1993 and he was liable to be evicted as such.

(10) We are further of the view that the lease granted to respondent No. 4 had the effect of transferring the custody of the Board's property for a limited period subject to the specified terms and conditions and at the end of the extended period of lease, the custody of the property automatically reverted to the Board and respondent No. 4 cannot claim any legal right to retain possession of the shop simply because he had deposited a specified sum by treating it to be the rent of the demised premises. Rather, as mentioned above, he had become an unauthorised occupant of the public premises and the amount deposited by him represented the damages for unauthorised use and occupation thereof.

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(11) The question as to whether a tenant can continue in possession as of right after the expiry of the lease was considered and answered by the Supreme Court in *M.C. Chockalingam and others versus Manickavasagam (1)*, in the following words :—

“Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it. This Court in *Lalu Yeshwant Singh’s* case (supra) had not to consider whether juridical possession in that case was also lawful possession. We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but can not *per se* always be equated with lawful possession.”

(Underlining is ours).

(12) In *Kewal Chand Mimani (Dead) by Lrs. versus S.K. Sen (2)*, the Supreme Court noted the distinction between ‘tenant holding over’ and ‘tenant at sufferance’ and held the latter does not have the right to continue in possession. For reference purposes, paragraphs 34 and 35 of that judgment are reproduced below :—

“34. Coming back to the second of the twin issues as noticed above, namely, can the Mimanis be termed to be a tenant holding over-incidentally, the act of holding over in any event after the expiration of the term does not necessarily create tenancy of any kind ; if the lessee remains in possession after the determination of the term and for all practical purposes, he becomes a tenant

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(1) 1974 (1) S.C.C. 48

(2) 2001 (3) R.C.R. (Civil) 746

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at sufferance. This Court in *R.V. Bhupal Prasad versus State of A.P. and others*, 1995 (4) RCR (Rent) 44 (SC) : 1995(5) SCC 698, had the occasion to deal with this concept of tenancy at sufferance. In paragraph 8 of the report, this Court observed :—

8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In *Mulla's Transfer of Property Act* (..Ed.) at page 633, the position of tenancy at sufferance has been stated thus : A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenancy holding over thus : The act of holding over after the expiration of the term does to necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better



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position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue to possession after the termination of the tenancy, his possession is juridical.

35. There is thus, however, a subtle difference resultantly a definite distinction between a tenant holding over and tenant-at-sufferance, as noticed above in Bhupal Prasad's decision (*supra*). Holding over stands equivalent to the retention of possession after determination of lease, but with the consent of the landlord—whereas, on similar circumstances if the possession is without the consent of the landlord then the same stands out to be a tenant-at-sufferance. Section 116 of the Transfer of Property Act does let a statutory recognition to the concept of holding over. Is the situation presently akin to a tenancy by way of holding over the property or the Mimanis be even termed as a tenant-at-sufferance—the answer obviously, in the facts of the matter under consideration, can not but be in the negative—Are the Mimanis in possession? The answer again cannot, but be in the negative. There exists a differentiation between the lessee of a determined lease in possession and a lessee dispossessed. Mimanis stands admitted dispossessed from the lease premises. Can any right be said to accrue in favour of the Mimanis—the answer cannot but be an emphatic 'no'—law courts will have to act within the limits of law and the courts try to take note of the moral fabric of the law."

(Underling is ours).

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(13) In Gram Panchayat, *Bhagal versus Bachna (3)*, the Supreme Court reversed the decision of this Court in *Bachna versus State of Haryana and others (4)*, and held that respondent No. 1, who was inducted as a tenant for a limited period of 5 years in 1963, had no authority to continue in occupation of the common land belonging to the Gram Panchayat and after the expiry of the term of lease, he had become an unauthorised occupant against whom proceedings of eviction could be taken under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961 Act') read with Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964.

(14) In *Gram Panchayat, Village Haripura, Tehsil Fazilka, District Ferozepur versus The Commissioner, Ferozepur Division, Ferozepur and others (5)*, a Full Bench of this Court examined the legality of the proceedings initiated by the Gram Panchayat under the 1961 Act for eviction of a tenant after expiry of the term of tenancy and held as under :—

“That the Section 3 Explanation of the Act specifically makes it clear that for the purpose of clause (a) a person shall not merely by reason that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee. A lease in contravention of Rule 6 of the Punjab Village Common Lands (Regulation) Rules, 1964, is no lease in the eye of law and obviously the Panchayat can, in such circumstance, resort to the provisions of Section 4 of the Act, seeking eviction of the supposed lessee who comes on the scene without a valid title under sub-rule (1) of rule 6. But here, as has been spelled out earlier, we do not want to enter into this controversy as to whether the lease could be granted orally or under a writing, for, in our view, it is sub-clause (b) of Section 3 of the Act which will be applicable to the case of the contesting respondents. Thereunder a person shall be deemed to be in unauthorised occupation of and public premises where he, being an

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(3) 1987 P.L.J. 656

(4) 1982 P.L.J. 377

(5) 1989 (1) P.L.R. 604

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allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises. As per the pleadings of the Panchayat, the Panchayat had put to auction the areas involved for lease but the contesting respondents sitting thereon had refused to vacate the areas in favour of the new lessees. Compelled, in these circumstances, if the Panchayat had accepted advance rent in cash from the contesting respondent, that by itself would not take the contesting respondents out of the purview of sections 3, 4 and 7 of the Act, for the leases in their favour had been determined in accordance with terms of that lease even though the lease was oral and not reduced to writing.”

(15) In *Roshan alias Roshan Lal and others versus Secretary, Govt. of Haryana Development and Panchayat Department, Chandigarh and others* (6), another Full Bench of this Court held that after expiry of the lease given for fixed period, the occupant can be evicted under Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972.

(16) A similar view has been expressed by us in C.W.P. No. 10902 of 2002—*Darshan Lal versus State of Punjab* and another decided on 5th August, 2002.

(17) From the above noted decisions of the Supreme Court and the Full Bench of this Court, the following propositions can be culled out :

- (i) Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant which necessarily postulates positive consent of the landlord except when, in view of a special law, the consent of the landlord is not necessary.
- (ii) Litigious possession cannot be equated with lawful possession.
- (iii) A tenant of the public premises, who retains possession after expiration of the term of lease without the consent of the landlord, is a tenant-at-sufferance and he is liable to be evicted by adopting summary procedure.

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- (iv) The deposit of an amount equivalent to monthly rent by the erstwhile tenant/lessee after expiration of the term of lease represents damages for unauthorised use and occupation of public premises and acceptance thereof by the owner during the pendency of proceedings in a Court of law or before an authority constituted under the Act or otherwise cannot give rise to a presumption that the owner has agreed to revive the lease or create a new one in favour of the erstwhile tenant/lessee and the Court cannot protect such unauthorised possession of public premises.

(18) We may now advert to the impugned orders. A reading of the order of the Collector shows that he dismissed the application filed by the petitioner only on the ground that respondent No. 4 had deposited an amount equivalent to monthly rent and some letters were written by the officer of the Board requiring him to deposit the amount. The Appellate Authority approved the reasons and dismissed the appeal of the petitioner by relying on the fact that the order passed by the Commissioner, Faridkot Division in a similar case has been upheld by the Supreme Court. In our opinion, the reasons assigned by both the authorities are legally unsustainable. The Collector has given undue importance to the factum of deposit of the amount equivalent to monthly rent by respondent No. 4. This, as held above, cannot but be treated as an amount representing damages paid during the pendency of the litigation for unauthorised use and occupation of the public premises. The writing of some letters by the officer of the Board to respondent No. 4 to deposit the amount cannot be termed as an act of acquiescence and in any case, it cannot lead to an inference that the Board had accepted respondent No. 4 as tenant or had extended the term of lease. In *Gram Panchayat, Village Haripura versus The Commissioner, Ferozepur Division, Ferozepur and others* (supra), the Full Bench unequivocally held that acceptance of advance rent deposited by the occupant cannot entitle him to lawfully retain possession of the panchayat land. The appellate order contains a reference to an order dated 28th August, 2000 passed by the Supreme Court. According to Shri P.S. Jammu, that order was passed by the Supreme Court in S.L.P. No. 12788 of 2000 filed by the petitioner against order dated 17th February, 2000 passed by a Division Bench of this Court in C.W.P. No. 1561 of 2000. The file of that case shows that booth No. 12 was leased out to one Naresh Kumar for a period of two years commencing from 28th October, 1994 at a monthly rent of Rs. 621. At the end of the term of lease, he applied for extension

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of leave, but no order was passed on his application. The application filed by the petitioner under Sections 4 and 7 of the Act was opposed by Naresh Kumar on the ground that the same had not been filed by the competent authority and also on the ground that he had been continuously paying rent which was accepted without any objection. The Collector dismissed the application on the ground that the same had not been moved by the competent authority and notice had not been given as per the rules. That order was confirmed by the Appellate Authority. C.W.P. No. 1561 of 2000 filed by the petitioner was dismissed summarily at the motion stage. The Division Bench referred to the finding recorded by the Collector that the application had not been filed by the competent authority and upheld the same because no material was placed before it to prove to the contrary. This is clearly borne out from the following extracts of order dated 17th February, 2000 :—

“After going through the impugned orders passed by the Collector and the Commissioner, deciding the petition as well as the appeal, we find that the Collector while dismissing the application held in last para of his order as under :

“From the arguments of the counsel and evidence on the file, I have come to the conclusion that in this case neither application was moved by the competent authority nor any notice was given under the rules. Apart from it regular rent is being received from the respondent. From the lease it is clear that this booth was given on lease and hence the petitioner could not prove how he is claiming Rs. 27,000 as rent @ Rs. 1,000 per month or Rs. 3,600 per month as rent. The ruling cited by the learned counsel for the respondent is fully applicable in this case as the order of Commissioner, Faridkot Division, Faridkot is having weight. In these circumstances, the application is dismissed.”

It is not disputed before us that the application moved on behalf of the petitioner did not have the signatures of the competent authority and as such, no fault can be found with the conclusion drawn by the Collector.”

(19) The S.L.P. filed by the petitioner was dismissed summarily by the Supreme Court on the first date of hearing.

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(20) In our opinion, order dated 17th February, 2000 passed in C.W.P. No. 1561 of 2000 cannot be relied upon as a precedent for declining relief to the petitioner because while summarily dismissing the writ petition, the Division Bench did not decide any question of law. None of the issues raised in this case was considered and decided in that case. Therefore, the mere fact that the Court had not entertained the petition filed by the Board in what respondent No. 4 thinks to be a similar case cannot be a ground to dismiss the present petition.

(21) Before concluding, we may refer to the judgements relied upon by Shri P.S. Jammu. In **Balkar Singh and another versus Commissioner, Jullundur Division, Jullundur and another** (7) a Division Bench of this Court held that if a tenant continued to remain in possession after expiration of the term of lease, he cannot be said to be an unauthorised occupant of the public premises. The Division Bench further held that after the expiry of lease period, he becomes a tenant holding over by virtue of Section 116 of the Transfer of Property Act.

(22) In **Prem Chand versus Commissioner, Patiala Division and others**, (8) a learned Single Judge of this Court held that once the rent was accepted by the competent authority after expiry of the lease, the occupation of the tenant cannot be treated unauthorised.

(23) In our opinion, these judgments cannot be treated as laying down good law in view of the contrary view expressed by the Supreme Court in *Gram Panchayat, Bhagal versus Bachna* (supra) and *Kewal Chand Mimani (Dead) by Lrs. versus S.K. Sen* (supra) and the decisions of the Full Benches of this Court in *Gram Panchayat, Village Haripura, Tehsil Fazilka, District Ferozepur* (supra) and *Roshan alias Roshan Lal and others versus Secretary, Government of Haryana Development and Panchayat Department, Chandigarh and others* (supra).

(24) For the reasons mentioned above, the writ petition is allowed. Orders Annexures P.3 and P.4 are declared illegal and quashed. As a consequence, application filed by the petitioner under Section 3 and 5 of the Act shall stand allowed. Respondent No. 4 is directed to hand over vacant possession of the shop to the competent authority of the Board within a period of 2 months, failing which the concerned authority shall be free to take possession by adopting appropriate means.

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**R.N.R.**

(7) 1989 P.L.J. 101

(8) 1993 P.L.J. 277