their disadvantage or prejudice by being made to agree to a lower valuation than may have been agreed to if the sixth *kotha* had also been included in the plaint. Persistence in one's mistake could be penalised in any of the two ways, namely, that the party at fault could either be mulcted in a substantial amount as costs which could be paid to the opposite party as compensation for the delay and the inconvenience caused in the proceedings or the party at fault could be robbed altogether of his legal rights. The latter would be a harsh and severe course which could be resorted to only if the opposite party cannot be otherwise compensated. Securing of substantial justice to the parties is more important than the drastic ending of the litigation in an unnatural manner. I would, therefore, agree only that on the peculiar facts of the case this appeal should be accepted and the pre-emption suit filed by plaintiff-respondent No. 1 should be dismissed leaving the parties to bear their own costs. I, do not, however, agree that we can lay down a rule of universal application that in all cases where a pre-emptor has failed to seek an amendment of his plaint during the trial after the opposite party had pointed out the defect of partial pre-emption at the earliest stage, he would be estopped from seeking that amendment at the appellate stage. The answer to this question would depend on the facts and circumstances of each individual case.

K.S.K.

FULL BENCH

Before D. K. Mahajan, R. S. Narula and Pritam Singh Pattar, JJ.

CHANDI RAM,—*Petitioner.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 3113 of 1971.

March 14, 1974.

Punjab Security of Land Tenures Act (X of 1953 as amended by XIV of 1962)—Sections 6 and 18—Transfer of land by big landlord after 15th August, 1947 and before 2nd February, 1955—Transferee, a small land owner inducting tenant—Such tenant—Whether entitled to purchase land under his tenancy—Section 18—Whether applies.

Held, that a tenant who wants to exercise the right of purchase under section 18 of Punjab Security of Land Tenures Act, 1953 has to satisfy the requirements of that provision and one of the requirements of the same is that the land which he seeks to purchase is held by a 'landowner'. The Punjab Security of Land Tenures (Amendment and Validation) Act No. 14 of 1962 made this difference that if the tenant was still a tenant of the land at the date when he wanted to exercise his right under section 18, by reason of the amendments affected by this Act, all transfers between 15th August, 1947 and 2nd February, 1955, had to be ignored, excepting bona-fide sales or mortgages with possession or transfers resulting from inheritance. This is the result of substituted section 6, but under this section also the tenant has to be a tenant of the transferor and the transfer has to be after 15th August, 1947, and before 2nd February, 1955. Even if the transfer is within these dates, but the tenant is not a tenant of the transferor, the substituted section 6 of the Act will not make any difference. The relationship of a landlord and a tenant is a contractual relationship. It is only when that relationship has come into being that the Act affords protection to the tenant. Where a tenant is not a tenant of a big landowner, but is inducted by his transferee who is a small landowner and although the transfer is after 15th August, 1947 and before 2nd February, 1955, yet such a tenant has no right to purchase the land under his tenancy because fundamental requirement both under sections 6 and 18 of the Act is lacking, namely, that he is a tenant of the transferor who is big landowner.

Case referred by the Division Bench consisting of Hon'ble Mr. Justice R. S. Narula and Hon'ble Mr. Justice A. D. Koshal, on 18th August, 1971 *at the preliminary hearing to a Full Bench as the correctness of some portion of the judgment of the Division Bench in* Ganpati *v.* Jagmal and others *may have to be considered. The Full Bench consisting of Hon'ble Mr. Justice D. K. Mahajan, Hon'ble Mr. Justice R. S. Narula and Hon'ble Mr. Justice Pritam Singh Pattar, finally decided the case on 14th March,* 1974.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that a writ in the nature of certiorari,* mandamus *or any other appropriate writ, order or direction be issued quashing the order of the Financial Commissioner, dated 28th July,* 1971 (*Annexure 'D'*).

K. L. Jagga and H. R. Aggarwal, Advocates, *for the petitioner.*

Satya Parkash Goyal and R. C. Setia, Advocates. *for respondents No.* 3 *to* 5.

JUDGMENT

MAHAJAN, J.—When this petition was admitted, the admitting Bench directed that the papers of the case may be laid before the learned Chief Justice for constituting a Full Bench as some portion of the decision in *Ganpat* v. *Jagmal and others*, (1) had to be considered. That is how, this petition has been placed before us.

(2) The facts giving rise to this petition are as follows. The land in dispute belonged to Munshi Ram. Munshi Ram made an oral gift of the same to his three sons, Harbans Lal, Mathra Dass and Kewal Krishan, on the 16th of March, 1952. Before the mutation could be attested, the Punjab Security of Land Tenures Act, Punjab Act 10 of 1953 (hereinafter referred to as the Act) came into force with effect from 15th April, 1953. The mutation of the oral gift was sanctioned on 7th October, 1953. On 11th of January, 1967, Chandi Ram, the present petitioner, filed three applications for purchase of the land which had been gifted by Munshi Ram to his three sons under section 18 of the Act. Three applications were necessitated because there were three donees. These applications were made to the Assistant Collector. On the 6th September, 1967, Harbans Lal, Mathura Das and Kewal Krishan filed ejectment petitions against Chandi Ram pleading that they were small landowners and needed the land for self-cultivation. On the 28th March, 1969, the tenant's applications under section 18 of the Act were allowed and the ejectment applications of the landowners were dismissed. The landowners then moved the Collector in appeal but without success. Thereafter, a revision petition was preferred to the Commissioner, Jullundur Division and that too was rejected by the Commissioner. Ultimately, a further revision was preferred before the Financial Commissioner and the Financial Commissioner allowed the same on 28th of July, 1971. His order is Annexure 'D' and that is the order which has been impugned in the present proceedings under Articles 226 and 227 of the Constitution of India.

(3) At no stage during the proceedings under section 18 of the Act, it was contended that the petitioner-tenant was in possession of the land at the date when the transfers, that is, the gifts, were made. The only contention was that the petitioner-tenant was in possession of the land for a period of six years at the date of the applications. The Financial Commissioner proceeded to decide the revision petition on

(1) 1963 P.L.R. 652.

the admitted basis that the petitioner-tenant was not in possession of the land as a tenant under Munshi Ram, but that he was a tenant under the donee-transferees from Munshi Ram. No attempt was made either at the hearing before the Financial Commissioner or thereafter that the petitioner-tenant had been under a misapprehension and, therefore, he did not either allege or prove that he was a tenant on the land before or at the transfer made by Munshi Ram. It is after the petition had been admitted that on the 3rd of September, 1971, an application was made under Order 41, rule 27, read with section 151 of the Code of Civil Procedure for permission to place Khasra Girdawaris and other revenue papers on the file of the case in the interest of justice. This application was rejected by the Division Bench on 11th November, 1971. The only documents filed with the application were the Khasra Girdwari entries wherein for the first time the petitioner is shown as a tenant in Kharif 1952, and thereafter. No Jamabandi entry was produced to show that the petitioner was in possession of the land as a tenant under Munshi Ram at the time when Munshi Ram transferred the same to his sons.

(4) At the hearing today, a further application was made under Order 1, rule 10, Order 22, rule 3 and section 151 of the Code of Civil Procedure, for bringing on record the legal representatives of Munshi Ram. It may be mentioned that Munshi Ram was not party to the proceedings before the revenue authorities right from the Assistant Collector to the Financial Commissioner. He was impleaded for the first time in this petition under Articles 226 and 227 of the Constitution of India. As Munshi Ram is not a necessary party, we have declined to allow this application and have rejected the same.

(5) The question that requires determination is whether the decision of the Financial Commissioner is in accordance with law. The main argument before the Financial Commissioner was that in *Ganpat's case*, no distinction was made in the case of a tenant who was in possession of the land as a tenant under the transferror and the case of a tenant inducted by the transferee after the transfer. The main burden of the argument is on the basis of section 6 of the Act. So far as section 18 of the Act is concerned, by itself, it does not help the case of the petitioner because the petitioner was not a tenant of the transferor and so far as the transferee is concerned, section 18 will not help him because the transferee is a small landowner. That is why the entire attempt of the petitioner before us was to persuade us to hold that section 18 will also come into play irrespective of the fact

whether the tenant held the land under a landowner though he had transferred the land which was not in possession of any tenant and on that land later on the transferee, who is a small landowner, had inducted the tenant, who is seeking to purchase the land under section 18. Section 18 provides that a tenant of a landowner other than the small landowner, who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or who has been restored to his tenancy under the Act and whose period 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 who was ejected from his tenancy after the 14th 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, is entitled to purchase from the landowner the land so held by him but not included in the reserved area of the landowner. This right is denied to a tenant who has sublet the land or part thereof to any person during the period of his continuous occupation unless he was suffering from a legal disability or physical infirmity and in the case of a woman, was a widow or was unmarried.

(6) It will be seen from the plain language of this provision that in order to make an application for purchase, the tenant has to be a tenant of a landowner other than a small landowner. Undoubtedly, Munshi Ram was a landowner and at the date when Munshi Ram disposed of the land in dispute the petitioner was not his tenant. Therefore, there is no question of the right accruing to the petitioner under section 18 so far as Munshi Ram is concerned. It is also no doubt true that when the application was made, the petitioner was a tenant of the transferees who are admittedly small landowners and as such the very language of section 18 would bar an application for purchase inasmuch as no right is given to a tenant of a small landowner to purchase the land owned by such small landowner.

(7) When faced with this difficulty, the learned counsel for the petitioner has pressed into service section 6 of the Act which is in the following terms. He has also drawn our attention to section 10-A (b) and section 16 of the Act. These provisions have been quoted below for facility of reference :—

> "6. No transfer of land, except a bona fide sale or mortgage with possession or a transfer resulting from inheritance,

made after the 15th August, 1947 and before the 2nd February, 1955, shall affect the rights of the tenant on such land under this Act.

10-A (b) Notwithstanding anything contained in any other law for the time being in force and save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance no transfer or other disposition of land which is comprised in surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a).

Explanation. Such utilization of any surplus area will not affect the right of the landowner to receive rent from the tenant so settled.

16. Save in the case of land acquired by the State Government under any law for the time being in force, or by an heir by inheritance, no transfer or other disposition of land affected after the 1st February, 1955, shall affect the rights of the tenant thereon under this Act."

(8) The scheme of the Act was considered in *Ganpat's case*, and it will be profitable to refer to some relevant observations bearing on the subject. In the statement of facts it is stated :—

"It is common ground that before the gifts were executed by the landowners in favour of the donees, the tenants, who are seeking to purchase the land under section 18 of the Act, were the tenants of the transferor-landowners."

Thereafter, the facts of each case decided by *Ganpat's* judgment were set out. Excepting in one case, the facts were identical. The facts in Civil Writ No. 456 of 1961 were different. In that case, the tenant seeking to purchase the land was not a tenant of the transferor. However, the decision in this case also was the same as that in the other cases. This seems to be more of an error than anything else, because my pertinent attention was not drawn to this distinction. The only matter that was debated before us in *Ganpat's case* was, whether the period of six years has to be reckoned from 15th of April, 1953, when the Act came into force, or backwards from the date of the application. The contention that was seriously pressed in *Ganpat's case* was that the period of six years has to be reckoned from 15th April, 1953, but this contention was repelled. Otherwise, the decision proceeded on the basis that the right under section 18 arises qua a landowner who is a big landowner of a tenant in whose favour section 18 of the Act operates. In other words, to get the benefit of section 18, the

tenant has to be a tenant of a big landowner. By reason of the transfers made by Munshi Ram, he ceased to be the landowner of the land in dispute. At the date of the transfers, the petitioner was not a tenant of the land. He became a tenant of the land under the transferees, and, therefore, his right under section 18 has to be judged *vis-a-vis* the transferees whose tenant he became. Therefore, no assistance can be drawn from *Ganpat's case,* wherein Civil Writ No. 456 of 1961 was treated at par with the other Civil Writs, though in Civil Writ No. 456 of 1961 the tenant claiming the right under section 18 was not the tenant of the transferor. After considering the scheme of the Act and its various provisions, it was observed in *Ganpat's case*:—

> "The overall result of the provisions of the Act, which have been noticed above, is that for purposes of determining under the Act the area owned by a 'landowner' all transfers of land excepting a *bona fide* sale, an acquisition by Government or by an heir by inheritance have to be ignored. The tenant is to continue as a tenant for ten years unless he is a tenant on the reserved area or is a tenant of a small landowner. Therefore, a tenant on the land which has been transferred and that transfer is not any one of the recognised transfers will continue to be the tenant on the land irrespective of the transfer. Therefore, if he satisfies the conditions which are a pre-requisite to the exercise of his right of purchase under section 18 and one of the conditions being that the land is held by the 'landowner' he can purchase it. Thus for the purposes of section 18 a tenant cannot exercise his right of purchase by ignoring the transfer. This seems to be the true legal position with regard to all transfers made between 15th August, 1947 and 15th April, 1953, the date on which the Act came into force. It is significant that the transfers other than those excepted by section 6 do not become void or inoperative so far as the transferor and the transferee are concerned but they cannot be recognised when they come in conflict with the purpose and the provisions of the Act. *Bona fide* sales are outside the prohibition regarding transfers under section 6 between 15th August, 1947 and 15th April, 1953, and are also not prohibited even after the 15th April, 1953. See in this connection section 16. However, the tenant has the right to pre-empt such sales out of the reserved area of a 'landowner' if his suit for pre-emption is otherwise within time.

The basis of the Act is to put a ceiling on land holdings and for that purpose the holding of a 'landowner' has to be determined. In order to determine that holding, the area owned by him, at the date of the Act, has to be determined. For that purpose, certain transfers are not recognised while certain other transfers are recognised. On that determination depends the status of the 'landlord'. Either he falls into the category of a 'landowner' or a 'small landowner'. There is no provision in the Act to the effect that after the transfer the tenant is to be deemed to be still the tenant of the 'landowner' making the transfer. Only his eviction was barred for ten years,—*vide* section 7. If his landlord is a 'landowner' he can buy his holding unless his holding is part of the reserved area. But if he is the tenant of a 'small landowner' both these rights are denied to him. This being the fundamental structure of the Act, it has to be seen whether the amendments made in the Act from time to time have made any departure from its scheme and purpose."

(9) In *Ganpat's case,* the history of the amendments by Amending Acts No. 57 of 1953, No. 11 of 1955, No. 46 of 1957 and No. 4 of 1959 was considered and it was observed:—

"It will be clear that up to this stage all transfers can pass title but the prohibited transfers under section 6 had to be ignored for the purpose for determining the total area owned by the landowner at the commencement of the Act. It was out of the total area owned that the 'landowner' had to carve out his reserved area and the rest was to fall in the category of surplus area. There is no prohibition on transfers excepting the one under section 10-A (b) and that only for the purposes of utilisation of the surplus area, from 15th April, 1953 to the 30th July, 1958 when by Ordinance and later on by the Act on the same lines, namely, the Amending Act No. 4 of 1959, all acquisitions of land over and above the permissible area by a landowner or a tenant were prohibited and were to be void."

This is the view that was taken by the learned Financial Commissioner in *Suba Singh etc.* v. *Arjan Singh etc.* (2). The position that

(2) 1961 L.L.T. 12.

prevailed upto the Punjab Security of Land Tenures (Amendment and Validation) Act 14 of 1962 was explained in *Ganpat's case* as follows—

> "This obviously means that transfers and dispositions made before the 1st February, 1955, are unaffected. If the legislature also wished to disregard all transfers made before that date it could easily have said so. If it wanted to avoid dispositions made after the commencement of this Act and affecting the rights of the tenants all that the Legislature had to do was to have substituted the words 'after the enactment of this Act' for the words 'after the 1st February, 1955'. Since it has not done so it must be presumed that the rights of tenants vis-a-vis transfers made by landowners were sought to be protected after the 1st February, 1955, and not earlier. As pointed out by the learned Commissioner, it is also significant that the right conferred on a tenant to pre-empt or purchase the land comprised in his tenancy follows the provisions of section 16. Turning to section 6 all that it states is that 'for the purposes of determining under this Act the area owned by a landowner all transfers of land except made after the 15th August, 1947, and before the commencement of this Act shall be ignored'. The plain implication of the section if read along with section 16, to my mind, is that it is applicable to landowners only for determining their surplus area and its utilization under section 10-A for the resettlement of ejected tenants, and not for safeguarding the rights of tenants against transfers etc. For that purpose section 16 has been specifically provided with a categorical date line. It is a well recognised principle of interpretation that where there is more than one provision touching on the same subject, then the specific provision must override the general one. Even if it is assumed for the sake of argument that this section also helps tenants under section 18, then it is apparent that there is a lacuna between the period from the commencement of this Act (15th April, 1953) and the 1st February, 1955, specified in section 16. This means that landowners who made dispositions affecting the rights of tenants between these two dates are saved while their colleagues who made idential transfers after the 15th August, 1947, and before the commencement of this Act are to be penalised. This would be manifestly unfair and discriminatory. It could never have been the intention of the Legislature to bring about such a result. Consequently, the only

proper interpretation that can be placed on the wordings and spirit of section 16 is that transfers and dispositions, except the protected ones, made after the 1st February, 1955 shall be disregarded if they adversely affect the rights of the tenant, and those made earlier shall be ignored. The purpose of section 6, as already mentioned, is to preserve and perpetuate the surplus area of a landowner with the object of fulfilling the objectives of section 10-A, by ignoring certain transactions made by him between specified dates.'

I am, therefore, clearly of the view that *Suba Singh's case* is rightly decided. This will be apparent from what I have already stated. Certain transfers between the 15th August, 1947, and the 15th April, 1953, were not to be recognised for the purposes of determining the area owned by a landowner. Apart from this, these transfers were good and valid transfers and did pass title from the transferor to the transferee. There was no similar prohibition with regard to transfers after the 15th April, 1953, up to 30th July, 1958, for the obvious reason that the permissible area vis-a-vis each landowner had to be determined on the 15th April, 1953, and whatever was beyond that area was to be surplus area. The transfers out of the surplus area were not to affect the right of the Government to utilise the same after the commencement of the Act, that is, after the 15th April, 1953. Therefore, if the transfers are good and pass title, the tenant who wants to exercise the right of purchase under section 18 has to satisfy the requirements of that provision and one of the requirements of the same is that the land which he seeks to purchase is held by a 'landowner'. In all the present cases the lands are owned by small land owners and are not held by a 'landowner', and therefore, the tenants cannot purchase the same. They can only purchase the same if the transfers by which the lands have vested in the small landowners are to be ignored. There is no provision under which they can be ignored for the purposes of section 18 of the Act, and for the first time a provision for ignoring them was made by section 16 after it was substituted by Act No. 11 of 1955, which provided that no transfer after the 1st February, 1955, shall affect the rights of the tenants in the land. Therefore, all transfers prior to the 1st February, 1955, cannot be ignored for the purposes of section 18. This date seems to

have been modified by enactment of section 19-B which in terms recognises all transfers up to the 30th July, 1958. However, it is not necessary to examine this matter any further because all the transfers in cases before us are of a date prior to the 1st February, 1955 and the reasoning of the Financial Commissioner in *Suba Singh's* case fully applies to them."

(10) The Punjab Security of Land Tenures (Amendment and Validation) Act No. 14 of 1962 made this difference that if the tenant was still a tenant of the land at the date when he wanted to exercise his right under section 18, by reason of the amendments of 1962, all transfers between 15th August, 1947 and 2nd February, 1955, had to be ignored, excepting bona-fide sales or mortgages with possession or transfers resulting from inheritance. This was the result of substituted section 6, the operative words of which are :

"No transfer of land ... made after the 15th August, 1947 and before the 2nd February, 1955 shall affect the rights of the tenant on such land under this Act."

I have purposely not referred to the excepted transfers, because the transfer in question would not be an excepted transfer under section 6. But one cannot escape from the conclusion that the tenant had to be a tenant of the transferor and the transfer had to be after 15th August, 1947 and before 2nd February, 1955. The transfer in the instant case was before 2nd of February, 1955 no doubt, but the tenant was not a tenant of the transferor and therefore, in his case the substituted section 6 of the Act would not make any difference. Section 6, before its substitution, merely provided that the transfers made after the 15th August, 1947 and before the commencement of the Act, shall be ignored, the commencement of the Act being 15th April, 1953, which date was extended by the substituted section 6 to 2nd of February, 1955, but otherwise the position remained the same whether the matter is considered under the original section 6 or the substituted section 6.

(11) It cannot be disputed, and indeed it was not, that the relationship of a landlord and a tenant is a contractual relation. It is only when that relationship has come into being that the Act affords protection to the tenant. So far as Munshi Ram is concerned, the petitioner was not his tenant. Therefore, the petitioner cannot claim protection of the Act. The petitioner became for the first time the

tenant of the transferees and if he can show that the transferees are big landowners, then alone he can have the benefit of section 18. It is not disputed that the transferees are not big landowners and the transfers in their favour are sought to be ignored by recource to section 6, but that does not bring into play section 18, because the fundamental requirement both under sections 6 and 18 is lacking, namely that the petitioner is the tenant of Munshi Ram, who admittedly was a big landowner.

(12) It is unfortunate that this distinction was lost sight of when Civil Writ No. 456 of 1961 was clubbed with the other writs where admittedly the tenants were the tenants of the big landowners prior to the transfers which had to be ignored by reason of section 6. In this view of the matter, no fault can, therefore, be found with the decision of the Financial Commissioner and the observations in *Ganpat's case* do not apply to Civil Writ No. 456 of 1961. This is clear from the judgment itself and I have quoted *in extenso* from the relevant parts thereof to demonstrate what in fact was decided therein.

(13) For the reasons recorded above, we dismiss this petition, but make no order as to costs.

NARULA, J.—I agree and have nothing to add.

PATTAR, J.—I agree.

K. S. K.

FULL BENCH

Before R. S. Narula, Bal Raj Tuli, and Muni Lal Verma, JJ.

MAHANT BIKRAM DASS,—*Appellant.*

versus

THE FINANCIAL COMMISSIONER,—*Respondent.*

Letter Patent Appeal No. 65 of 1971.

March 19, 1974.

Limitation Act (IX of 1908)—Article 151—Limitation Act (XXXVI of 1963)—Article 117—Letters Patent of Punjab High Court—Clause X—Punjab High Court Rules and Orders, Volume V, Chapter 1-A(a)—Rule 4—Letters Patent Appeal filed beyond time—Power to condone delay and extend time—Whether confined to the Bench admitting it—Jurisdiction of the