

never admitted by him. From this it is clear that the scope of O. 8 R. 5 C.P.C., is only confined to the stage of pleadings and it has nothing to do with the conduct of the case afterwards. I am supported in this view of mine by a Bench decision of the Madras High Court in *Naggappa and others v. Siddalingappa and others* (2). The ruling relied upon by the learned counsel for the appellants has no application to the facts of the present case, because full facts regarding the entire proceedings of that case have not been given therein. I may, however, mention that there is authority for the proposition that if in the written statement one were to say with regard to a particular allegation of fact in the plaint that it is not known, i.e., "la ilmi", it will not be equivalent to saying that that allegation of fact is "not admitted" [see in this connection *Lakhmi Chand v. B. Ram Lal Kapur Vakil* (3)]. Under these circumstances, the plaintiff was not put to the proof of the allegations made by her in the plaint that she was the owner of the house in dispute. In this view of the matter, the trial Court had not made any error in not framing an issue regarding the ownership of the house.

The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

B.R.T.

CIVIL MISCELLANEOUS

Before S. S. Dulat and Prem Chand Pandit, JJ.

LACHMI NARAIN AND OTHERS,—Petitioners  
versus

THE FINANCIAL COMMISSIONER, PUNJAB, AND  
OTHERS,—Respondents

Civil Writ No. 715 of 1963

*Punjab Security of Land Tenures Act (X of 1953)*—S.  
18—Tenants entitled to make applications for purchase of

(2) 47 I.C. 589.

(3) A.I.R. 1931 All. 423.

Rajindar Kaur  
and others  
v.  
Daropdi and  
others  
Pandit, J.

1963

Oct., 1st.

*land comprised in their tenancy—Whether must have been in continuous possession for six years before the date of application or before the commencement of the Act—S. 10-A(b)—Utilisation of surplus area under Transferee of such area—Whether liable to accommodate ejected tenants.*

*Held*, that the tenants who are governed by clauses (i) and (ii) of sub-section (1) of section 18 of the Punjab Security of Land Tenures Act, 1953, shall be entitled to purchase from the landowner the land so held by him, but not included in his reserved area, at any time, while the tenants included in clause (iii) can exercise this right within a period of one year from the date of the commencement of the Act. The Legislature has not put any restriction in the way of the tenants falling under clauses (i) and (ii) for making applications for the purchase of land under their tenancies. All that is necessary for a tenant falling under clause (i) to show is that he was in continuous occupation of the land comprised in his tenancy for a minimum period of six years on the date when he makes an application for the purchase of land under section 18.

*Held*, that any area declared surplus at the time of the commencement of the Act would remain so, even if it was purchased by anybody, including the tenants under the provisions of section 18 of the Act, after the enforcement of the Act. The result would be that the transferee would be bound to accommodate the ejected tenants, whom Government may wish to resettle under section 10-A(a) of the Act and this obligation will not be altered by the fact that the vendee or transferee is himself a small landowner. In other words, such a transferee would be a limited owner subject to the obligations mentioned above.

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, or any other writ or direction be issued quashing the orders of Financial Commissioner, Punjab, dated 24th April, 1963 and restoring that of the Commissioner, Jullundur Division, dated 14th December, 1962.*

N. L. DHINGRA, ADVOCATE, for the Petitioners.

M. R. SHARMA, ADVOCATE, AND S. M. SIKRI, ADVOCATE-GENERAL, H. L. SARIN AND K. K. CUCCRIA, ADVOCATES, for the Respondents.

## ORDER

PANDIT, J.—This order will dispose of three writ petitions (Civil Writs Nos. 715, 716 and 1138 of 1963), which arise out of the same order, dated 24th April, 1963, passed by the learned Financial Commissioner, Revenue, Punjab. Dharam Paul and others, who are the tenants, applied to the Assistant Collector, 1st Grade, Fazilka, under section 18 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act), for the purchase of the land in dispute. The landlords raised the following two preliminary objections:—

Pandit, J.

- (1) Under the provisions of section 18(1) of the Act, only such a tenant was competent to file an application for the purchase of the land under his tenancy, who had completed a continuous period of six years prior to the commencement of the Act.
- (2) Under the provisions of section 19-A of the Act, a tenant who either owned or held area beyond the permissible limit was not competent to purchase his tenancy until he divested himself of the area beyond the permissible limit.

As regards objection No. 1, the same was overruled by the Assistant Collector, holding that though the wording of this section strictly construed might lead to the interpretation put by the landlords, yet, according to the practice of their Department, these applications were being entertained irrespective of the fact whether the tenants had completed a continuous period of six years at the time of the commencement of the Act. With regard to objection No. 2, it was held that the tenants could not hold more than the permissible area, but they could not give up any area till their applications under section 18 of

Lachhmi Narain  
and others  
v.  
The Financial  
Commissioner,  
Punjab  
and others

the Act were decided in their favour. They could, however, be called upon to file an affidavit to the effect that they would give up the excess area in the event of their applications being accepted. He, therefore, directed the tenants to file such affidavits.

Pandit, J.

When the matter went in appeal to the Collector, he held that under the provisions of section 18, the period of six years must be completed by the tenants at the time of the commencement of the Act. With regard to the second objection, his decision was that the status of the tenants had to be seen on the date when they made applications under section 18 and if they were in possession of more than the permissible area on that date, they were not entitled to make such applications. As a result, the appeal of the landlords was accepted and it was held that the tenants were not entitled to purchase the land in dispute.

This order of the Collector was affirmed by the Additional Commissioner.

Thereafter, the tenants went in revision to the learned Financial Commissioner. He held that the right of purchase under section 18(1)(i) of the Act could only be exercised by the tenants whose tenancies existed on 15-4-1953, that is, the date of its commencement, and that the tenants should have been in continuous occupation of the lands comprised in their tenancies for a minimum period of six years on the date of the application for the purchase of the land and that land had not been included in the reserved area of the landowner. He further held that the tenants who, on the date of the applications, owned or held land exceeding the permissible area, would not be entitled to purchase the same under their tenancies. As a result of these findings, the revision petitions were partly accepted, the orders of the Collector and the Additional Commissioner were

set aside and the cases were remanded to the Assistant Collector, First Grade, for a fresh decision in view of his findings given above.

Against this decision, three writ petitions were filed in this Court, two by the landlords, namely, Civil Writ No. 715 of 1963 (*Lachhmi Narain and others v. The Financial Commissioner, Punjab and others*) and Civil Writ No. 716 of 1963 (*Bahadur Ram and others v. Financial Commissioner, Punjab and others*), and one by the tenant, this is Civil Writ No. 1138 of 1963 (*Budh Ram v. Financial Commissioner, Punjab and others*).

Learned Counsel for the landlords submitted that the finding of the learned Financial Commissioner to the effect that the tenants must have been in continuous occupation of the land comprised in their tenancies for a period of six years on the date of the application for the purchase of land was incorrect. The learned Additional Commissioner and the Collector were right in holding that this continuous possession of the tenants for six years must be on the date of the commencement of the Act. Since it had been found that the tenants had failed to establish that they were in such possession on the date of the enforcement of the Act, their applications under section 18 of the Act were rightly dismissed by the Collector and the learned Financial Commissioner should not have remanded the same for a fresh decision. Learned counsel further submitted that if the interpretation put by the learned Financial Commissioner on the provisions of section 18 was to be accepted, then it would defeat the very purpose for which the Act was enforced. He referred to the various provisions of the Act, as for example, sections 2(5-a), 9(1)(i), 9-A, 10-A, 18, 19-C and 19-F of the Act and argued that these provisions clearly indicated that the surplus area declared at the time of the commencement of

Lachhmi Narain  
and others  
v.  
The Financial  
Commissioner,  
Punjab  
and others  
Pandit, J.

Lachhmi Narain  
and others  
v.  
The Financial  
Commissioner,  
Punjab  
and others  
—  
Pandit, J.

the Act, could only be utilised by the Government for the resettlement of the tenants ejected under the provisions of section 9(1)(i) of the Act and further that section 10-A(b) also stated that the utilization of any surplus area would not affect the rights of the landowner to receive rent from the tenants so settled. According to the learned counsel, only those tenants could purchase the land under the provisions of section 18 of the Act, who were in continuous possession of the land for a period of six years at the time of the commencement of the Act, because after this date, the land, beyond the permissible limit, was declared surplus area and the landowners could not be deprived of the rent from the tenants, who were settled by the Government on the same.

The relevant portion of section 18 of the Act is in the following terms:—

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

- (i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or
- (ii) who has been restored to his tenancy under the provisions of this Act and whose period of continuous occupation of the land comprised in his tenancy immediately before ejection and immediately after restoration of his tenancy together amounts to six years or more, or
- (iii) who was ejected from his tenancy after the 14th day of August, 1947, and

before the commencement of this Act, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejection,

Lachmi Narain  
and others  
v.  
The Financial  
Commissioner,  
Punjab  
and others

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

Pandit, J.

\* \* \*  
\* \* \*

A plain reading of this section would show that the tenants who are governed by clauses (i) and (ii) shall be entitled to purchase from the landowner the land so held by him, but not included in his reserved area, *at any time*, while the tenants included in clause (iii) can exercise this right within a period of one year from the date of the commencement of the Act. It is, therefore, clear that the Legislature did not put any restriction in the way of the tenants falling under clauses (i) and (ii) for making applications for the purchase of the land under their tenancies. It, therefore, follows that in the case of the tenants falling under clause (i), all that was necessary for them to show was that they were in continuous occupation of the land comprised in their tenancies for a minimum period of six years. This is obviously on the date when they were making an application for the purchase of land under section 18. The section does not say that they should be in continuous possession for six years at the time of the commencement of the Act. We will have to introduce the words "at the commencement of the Act" after the words "for a

Lachhmi Narain  
and others  
v.  
The Financial  
Commissioner,  
Punjab  
and others  
Pandit, J.

minimum period of six years" occurring in clause (i) mentioned above, if we accept the interpretation put on this section by the learned counsel for the landlords. In my view, the language of the statute is clear and is capable only of one meaning, namely, that tenants must be in continuous occupation of the land under their tenancies for a period of six years on the date of the making of the application under this section. It is, therefore, not necessary to introduce the words, which the learned counsel for the landlords wishes us to do.

So far as the other argument of the learned counsel for the landlords regarding the utilisation of the surplus area under the provisions of section 10-A(b) of the Act is concerned, in my view any area declared surplus at the time of the commencement of the Act would remain so, even if it was purchased by anybody, including the tenants under the provisions of section 18 of the Act, after the enforcement of the Act. The result would be that the transferee would be bound to accommodate the ejected tenants, whom Government may wish to resettle under section 10-(A)(a) of the Act and this obligation will not be altered by the fact that the vendee or transferee is himself a small landowner. In other words, such a transferee would be a limited owner subject to the obligations mentioned above. Therefore, the argument of the learned counsel for the landlords that this surplus area could not be purchased by these tenants after the commencement of the Act under the provisions of section 18 does not hold good.

From the above, it is clear that the finding given by the learned Financial Commissioner that the tenant must prove his continuous occupation of the land comprised in his tenancy for a minimum period of six years on the date of the application for the purchase of the land under section 18 of the Act is correct.



The writ petitions filed by the landlords (Civil Writs Nos. 715 and 716 of 1963) are, therefore, dismissed. In the circumstances of this case, however, the parties are left to bear their own costs in these proceedings.

Lachhmi Narain  
and others  
v.  
The Financial  
Commissioner,  
Punjab.  
and others

Learned counsel for the tenants submitted that the findings given by the learned Financial Commissioner that the right of purchase under section 18(1) (i) of the Act could only be exercised by the tenant whose tenancy existed on the date of the commencement of the Act, that is, 15th April, 1953, and that a tenant, who on the date of the application owned or held land exceeding the permissible area, would not be entitled to purchase the land under his tenancy were incorrect.

Pandit, J.

We are, however, not prepared to pronounce any opinion on these two matters at this stage. The tenants are not objecting to the order of the remand made by the learned Financial Commissioner. The cases have to go back to the Assistant Collector, First Grade, who has, in the first instance, to decide the questions of fact, namely, whether these tenants were in occupation of the land in dispute as tenants on 15th April, 1953 or not and, secondly, whether they owned or held any land exceeding the permissible area on the date of the applications made by them under section 18 of the Act. After these questions are determined, these cases will then be finally decided. If the decision goes against them, they will naturally move the higher authorities prescribed under the Act and after exhausting all the remedies they can approach this Court, if so advised. At the present moment, all that can be said is that there is an expression of opinion on a point of law by the learned Financial Commissioner. Even if this opinion be against the tenants, this Court in writ proceedings is not going to pronounce judgment on abstract propositions of law.

Lachmi Narain  
and others  
v.  
The Financial  
Commissioner,  
Punjab  
and others

When a concrete case will come up for decision and it is found that the same has been decided contrary to law, then this Court will interfere. With these observations, the writ petition (Civil Writ No. 1138 of 1963) is also dismissed with no order as to costs.

Pandit, J.

Dulat, J.

S. S. DULAT, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C. J., and Harbans Singh, J.

SOMTI PARKASH,—Appellant

versus

NATHA AND ANOTHER,—Respondents

Letters Patent Appeal No. 77 of 1960

1963.

Oct., 7th.

*Transfer of Property Act (IV of 1882)—S. 111 (g)—Transfer of land by the landlord—Tenant sticking to the original tenancy and questioning the validity of the transfer—Whether entails forfeiture of tenancy on the ground of repudiation of the landlord's title—Suit for ejectment of tenant from agricultural land on the ground of forfeiture of tenancy—Notice in writing preliminary to suit—Whether necessary.*

*Held*, that when a landlord transfers the land in favour of another and in the proceedings for ejectment of the tenant by the transferee, the tenant sticks to his original tenancy and questions the validity of the alleged transfer in favour of the transferee, it does not amount to repudiation of the landlord's title which entails a forfeiture of the tenancy.

*Held*, that the provisions of the Transfer of Property Act, 1882, do not apply to agricultural land and no notice in writing preliminary to the filing of the suit for ejectment as provided in section 111 (g) of the Act is necessary to be given in a case where the Transfer of Property Act is not applicable, as this provision with regard to notice is not based on any principle of justice, equity or good conscience.