suspension of the Sarpanch in the course of an enquiry and that the impugned order of suspension of the petitioner is valid and in accordance with law. This petition, therefore, fails and is dismissed though without any order as to costs.

K.S.K.

APPELLATE CIVIL.

Before P. C. Pandit and S. S. Sandhawalia, JJ.

JAISI RAM,—*Petitioner.*

versus.

THE FINANCIAL COMMISSIONER, PUNJAB ETC.,—*Respondents.*

L.P.A. No. 299 of 1970.

January 8, 1971.

Pepsu Tenancy and Agricultural Lands Act (*XIII of* 1955)—*Sections* 7, 7-*A*, 20, 22, 23 *and* 39—*Pepsu Tenancy and Agricultural Lands Rules* (1958)—*Rule* 14—*Petition for revision before Financial Commissioner under section* 39(3)—*Filing of certified copies of the orders of Collector and Prescribed Authority along therewith—Whether essential—Tenant of agricultural land voluntarily giving up possession of the land to the land-lord—Action under stction 7 or 7-A—Whetherr essential—Possession of such land-lord—Whether unlawful—Tenant applying for acquiring proprietary rights of the land under his tenancy—Whether has to show his possession over the same land for the statutory period.*

Held, that sub-sections (1) and (2) of section 39 of Pepsu Tenancy and Agricultural Lands Act dealing with the filing of appeals indicate that certified copies of the orders under appeal are to accompany the memorandum of appeal. But there is no such indication with regard to the attaching of certified copies under sub-section (3) dealing with revisions. Sub-section (3) says that the Financial Commissioner shall have the same power to call for, examine and revise the proceedings of the Prescribed Authority or the Assistant Collector of the First Grade or the Collector or the Commissioner, as is provided in section 84 of the Punjab Tenancy Act, 1887. There is nothing in the Punjab Tenancy Act or the Rules framed under the Act, which require that the documents mentioned above must accompany the revision petition filed under section 39(3) of the Act. (Para 4).

Held that if the land-lord wants to ejected the tenant, he has to take recourse to the provisions of sections 7 or 7-A of the Act, but if the tenant

himself surrenders possession and gives it over to the landlord, then these sections do not come into play. If the tenant without any coercion, himself gives up possession of the land under his tenancy in favour of the landlord, then it cannot be said that the landowner's possession is in any way unlawful. (Para 11).

Held, that a combined reading of sections 7, 7-A, 20, 22 and 23 of the Act and Rule 14 of Pepsu Tenancy and Agricultural Land Rules, 1958 shows that if a tenant is in possession of some land for more than 12 years, he can claim proprietary rights therein from the landowner. He has to mention the particulars of that land, namely, its khasra, khewat and khata numbers, and the enquiry would then be made whether he was actually in possession of that land continuously for a period of 12 years or more under the same landowner or his predecessor immediately preceeding 3rd December, 1953 which was the date of the commencement of the Act. The acquisition of proprietary rights has thus to be with regard to a particular piece of land. If a person has been a tenant of the same area of land under a landowner, but he was occupying different parcels of land though of the same area, he cannot acquire proprietary rights in any of such parcels. He has to be continuously in possession for the statutory period of same piece of land before he can claim proprietary rights therein. The said rights can be acquired with regard to a particular land, if he has been in possession thereof for the statutory period. (Para 24).

Letters Patent Appeal under Clause X against the Judgment passed by Hon'ble Mr. Justice C. G. Suri dated 14th May, 1970 in Civil Writ No. 2364 of 1963.

J. N. KAUSHAL, ADVOCATE WITH ASHOK BHAN, ADVOCATE, for the appellant.

P. S. MANN, ADVOCATE FOR ADVOCATE-GENERAL, PUNJAB, AND S. P. JAIN, ADVOCATE, for the respondents.

JUDGMENT

P. C. PANDIT, J.—(1) This order will dispose of three connected Letters Patent Appeals Nos. 299, 300 and 485 of 1970. It is conceded by the counsel for the parties that the decision in Letters Patent Appeal No. 299 of 1970 will govern the other appeals as well.

(2) Jaisi Ram was the owner of the land in dispute. He filed four writ petitions (Nos. 2361 to 2364 of 1963) under Articles 226 and 227 of the Constitution against his tenants on four different parcels of land. His prayer was that the orders passed by the Financial Commisioner, Punjab, conferring proprietary rights on the tenants under the Pepsu

Tenancy and Agricultural Lands Act, 1955, hereinafter called the Act, in each case be quashed. All these petitions came up for hearing before C. G. Suri J., and since the questions of law and fact involved in them were similar and the Revenue Authorities had also taken up those cases together, the learned Judge disposed of the writ petitions by one judgment. All those petitions were dismissed, with the result that Jaisi Ram, filed these four Letters Patent Appeals. One of them, namely, Letters Patent Appeal No. 483 of 1970, which was against the judgment in Civil Writ No. 2362 of 1963, has admittedly abated. The other three Letters Patent Appeals, viz. Letters aPtent Appeals No. 299, 300 and 485 of 1970, which have arisen out of the Writ Petition Nos. 2364, 2361 and 2363 of 1963, respectively, are being disposed of by this judgment.

(3) In Civil Writs Nos. 2361 and 2363 of 1963, the learned Financial Commissioner had rejected the landowner's revision petitions summarily on the ground that the copies of the orders of the Collector and the Prescribed Authority had not been filed along with them. Regarding this matter, the finding of the learned Single Judge was that there was no provision in the Act or in the rules framed thereunder requiring the filing of such copies with the revision petitions. On this point, the learned Judge observed :

> "Such revisions lie under sub-section (3) of section 39 which gives the Financial Commissioner the power to call for, examine and revise the proceedings of subordinate authorities in the manner provided under section 84 of the Punjab Tenancy Act, 1887. Sub-sections (1) and (2) of Section 39 dealing with filing of appeals indicate that certified copies of the orders under appeal are to accompany the memorandum of appeal, but there is no such indication with regard to the filing of certified copies in sub-section (3) dealing with revisions. The rules framed under this Act or the Punjab Tenancy Act do not require any copies to be filed with the revision petitions."

He then held that the summary rejection of the revision petitions on that ground, therefore, was not justified.

(4) Counsel for the State submitted that the above finding of the learned Single Judge was wrong in law and the Financial Commissioner had rightly rejected the aforementioned two revision petitions

summarily. He, however, was unable to substantiate his submission by reference to any statutory law or rule or any decided case. It was conceded that the said revisions had been filed under section 39(3) of the Act. It was not stated in this section that the certified copies of the orders of the Collector and the Prescribed Authority had to be attached with the revision petitions. The learned Single Judge was, if I may say so with respect, right in observing that sub-sections (1) and (2) of section 39 dealing with the filing of appeals indicated that certified copie sof the orders under appeal were to accompany the memorandum of appeal. But there was no such indication with regard to the attaching of certified copies under sub-section (3) dealing with revisions. Sub-section (3) says that the Financial Commissioner shall have the same power to call for, examine and revise the proceedings of the Prescribed Authority or the Assistant Collector of the First Grade or the Collector or the Commissioner, as is provided in section 84 of the Punjab Tenancy Act, 1887. Learned counsel for the State could not point out that there was anything in the Punjab Tenancy Act or the Rules made thereunder or in the Rules framed under the Act, which required that the documents mentioned above must accompany the revision petition filed under section 39(3) of the Act. During the course of arguments, some reference was made to the revision petitions filed under section 115 of the Code of Civil Procdure, but it should be remembered that the rules framed by this Court require that the certified copies of the orders complained against should be filed along with these petitions. There is no such requirement under the provisions of the Act or the Rules made thereunder.

(5) This point came up for consideration before Mr. R. S. Randhawa, Financial Commissioner, Punjab, in *Gugan Singh* v. *Ram Pal* (1), and there he held—

> "*that as no rules as required by section 88 of the Punjab Tenancy Act have been framed by the State Government, the Code of Civil Procedure, so far as it is applicable, applies to all proceedings in Revenue Courts. Order 41, Rule 1, Code of Civil Procedure, does not apply to revisions and Rule 7 of Chapter 1-A, Volume V. of High Court Rules and Orders applies to proceedings before Civil Courts only. This has not been made applicable to Revenue Courts by

(1) 1962 L.L.T. 60.

the State Government. Where the copy of the judgment of the Commissioner is sufficient to enable the Financial Commissioner to form an opinion as to whether it was a case where he should call for the record of the case decided by the Commissioner, for examination, a copy of the decree passed by the Commissioner is not necessary as annexure to the revision petition and the copy of the judgment of the Commissioner is sufficient for that purpose."

(6) No case taking a contrary view had been cited by the learned counsel for the State. As at present advised, I am unable to say that the finding given by the learned Single Judge on this point was in any way erroneous.

(7) I may mention that counsel for the appellant also submitted that when once a revision petition had been admitted, the same could not be dismissed for a formal defect, like the one pointed out by the learned Financial Commissioner. In this connection, he referred to a Single Bench decision of the Allahabad High Court in *J. P. Ojha* v. *Firm R. R. Tandan and another* (2), where it was observed:

"If the Court wants to throw out the revision on the ground that it was not properly presented it should do so at the earlier stage. Once the revision has been admitted, entertained and listed for final hearing the Court cannot take the view that the revision was not properly presented."

(8) This authority, however, deals with revisions filed in a High Court under section 115 of the Code of Civil Procedure.

(9) In Civil Writs Nos. 2361 and 2364 of 1963, Jaisi Ram has also pleaded that he had entered into a compromise with the tenants in possession of the lands and the latter had surrendered their rights under the lease, with the result that they could not be granted any proprietary rights in the land in their possession.

(10) This contention of the landowner was rejected by the learned Single Judge on the ground that there was nothing on the

(2) A.I.R. 1962 All. 485.

record to suggest that in the said two cases, the tenants had abandoned the lease for good after handing over the possession to the landlord. The tenancy could be terminated only under the provisions of sections 7 and 7 A of the Act. As the tenancy had not been terminated in accordance with the provisions of the Act, the same was held to continue to subsist.

(11) Mr. J. N. Kaushal, appearing for Jaisi Ram, frankly admitted that in Civil Writ No. 2364 of 1963, out of which Letters Patent Appeal No. 299 of 1970, had arisen, there was no positive proof on the file that the tenant had of his own accord relinquished the tenancy and gone away after handing over the possession of the land to the landlord. In Civil Writ No. 2361 of 1963, however, which gave rise to Letters Patent Appeal No. 300 of 1970, there were annexures 'A' and 'A-1' filed along with the petition, which proved that a compromise had been effected between the landlord and the tenant and the latter himself surrendered possession of the entire land to the former. An application had been filed on 5th August, 1960, by Jaisi Ram, against the tenant, Mehtab, for his ejectment from the land in dispute on the ground of non-payment of rent in the Court of the Assistant Commissioner, 1st Grade, Patiala. In that case, a compromise was arrived at between the landlord and the tenant whereby the landlord relinquished his claim for rent and the tenant surrendered possession of the entire land in his occupation together with the crops standing theron. A written application signed by the landowner and the tenant was made jointly to that effect on 4th July, 1961, and on 19th July, 1961, the Revenue Authorities consigned the ejectment application to the record room as a result of the compromise between the parties. When the tenant himself gave up possession of the land, there was no necessity of taking action under the provisions of sections 7 and 7A of the Act. It is true that if the landlord wanted to eject the tenant, he had to take recourse to the said provisions, but if the tenant himself surrenders possession and gives it over to the landlord, then these sections do not come into play. It is a different matter if the tenant were to allege that the compromise, on the basis of which he is supposed to have given up the possession, had been arrived at by means of fraud, etc. But this is not the position taken by the tenant in the instant case. If the tenant, wihout any coercion, himself gives up possession of the land under his tenancy in favour of the landlord, then it cannot be said that the landowner's possession is in any way unlawful. This point has been settled by a Division Bench of

this Court in *Hartej Bahadur Singh* v. *The State of Punjab* (3), where it was observed—

"That section 7 of the Pepsu Tenancy and Agricultural Lands Act relates to the circumstances in which a tenancy can be terminated, but that does not imply that if a tenant of his own accord, relinquishes the tenancy and goes away handing over the possession to the landlord saying that she is no longer interested in the land, the possession of the landlord will become unauthorised or illegal."

(12) There is a decision of Mr. B. S. Grewal, Financial Commissioner, Punjab, taking a contrary view in *Dalip Singh* v. *Basanta, etc.* (4), where it was held that even if the story of voluntary surrender was believed, even then the tenancy could not be terminated, except under sections 7 and 7A of the Act. For the reasons given earlier, I am of the view that this does not lay down correct law.

(13) It was argued by the learned counsel for the State that in the ejectment application only the statement of the landowner was recorded and not of the tenant before consigning that application to the record room.

(14) There is no substance in this contention, because the application, dated 4th July, 1961, regarding the compromise had been thumb-marked both by the landlord and the tenant and since the application for ejectment had been made by the landowner and it was he, who was not pressing it in view of the said compromise, therefore, his statement alone was quite enough. The point, however, remains that the tenants had himself surrendered possession of the entire land, which was in his occupation, to the landowner and this fact was mentioned in the compromise application, which was, as already mentioned above, thumb-marked by the tenant. It is also significant to mention that this application was witnessed by Kartar Singh, a Lambardar of the village, and another person, named, Biram.

(15) It was also submitted that the said compromise required registration, because the tenant was relinquishing his tenancy rights in the land in his occupation in favour of the landowner.

(3) 1964 P.L.R. 751.
(4) (1962) 1962 Curr. L.J. 501.

(16) This contention is also meritless. As already mentioned above, an application for ejectment of the tenant for non-payment of rent had been made by the landowner in the Court of the Assistant Collector, 1st Grade. There a compromise was arrived at between the parties by virtue of which the landowner relinquished his claim for the rent against the tenant and the latter surrendered possession of the land in his occupation to the former. Thereupon, the landowner gave a statement that he did not wish to pursue his ejectment application any further. The Assistant Collector, 1st Grade, then consigned that application to the record room, as a result of the compromise made between the parties. The landowner wanted to make use of these proceedings, when subsequently the tenant filed an application under section 22 of the Act for acquiring proprietary rights in the land. In these circumstances the earlier proceedings, namely, the compromise application and the order of the Assistant Collector, 1st Grade, made after the statement of the landowner was recorded, do not require registration. The provisions of clause (vi) of section 17(2) of the Indian Registration Act, 1908, will apply to such a case. That clause says:

"17(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

> (vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit or proceeding."

(17) Coming to the merits of these writ petitions, the only point to be determined is whether under the law it is necessary for the tenant to be in possession of the same land or the same area under the landlord for the requisite period before he could acquire the proprietary rights therein.

(18) The Financial Commissioner, whose decision is being impugned in these revision petitions, was of the view that the tenant had merely to show that he was in possession of the same area as a tenant under the landlord and if he did that he could get propritary rights therein. Learned Single Judge was of the opinion that two interpretations of the relevant sections on this point were possible and if the Financial Commissioner had taken one view, then this Court would not interfere with that decision on the writ side.

(19) The portion of section 22 of the Act, which deals with the acquisition of proprietary rights by the tenants, reads—

"22(1) Subject to the other provisions contained in this Act, a tenant shall be entitled to acquire from his landowner in respect of the land comprising his tenancy the right, title and interest of the landowner in such land (hereinafter referred to as the 'proprietary rights') in the manner and subject to the conditions hereinafter provided.

(2) Every tenant intending to acquire proprietary rights shall make an application in writing to the prescribed authority in the prescribed manner, containing the following particulars, namely:—

(a) the area and location of the land in respect of which the application is made;

(b) the name of the landowner from whom proprietary rights are to be acquired ;

(c) such other particulars as may be prescribed.

(20) The expression 'tenant' occurring in the above section has been defined in section 20, the relevant part of the same, which deals with the case in hand, is as follows:—

"20. In this Chapter, the expression 'tenant' means a tenant as defined in clause (k) of section 2, who is not liable to be ejected—

(a) under clauses (a) and (b) of sub-section (1) of section 7 A, or

(b) under clauses (a) and (b) of sub-section (2) of section 7A."

The relevant portion of section 7 A reads :

"7A(1) Subject to the provisions of sub-sections (2) and (3) a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, may be terminated on the following grounds in addition to the grounds specified in section 7, namely:—

(a) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter II.

(b) that the landowner owns thirty standard acres or less of land and the land falls within his permissible limit :

Provided that no tenant (other than a tenant of a landowner who is member of the Armed Forces of the Union) shall be ejected under this sub-section—

(i) from any area of land if the area under the personal cultivation of the tenant does not exceed five standard acres, or

(ii) from an area of five standard acres if the area under the personal cultivation of the tenant exceeds five standard acres,

until he is allotted by the State Government alternative land of equivalent value in standard acres.

7A(2) No tenant, who immediately preceding the commencement of the President's Act has held any land continuously for a period of twelve years or more under the same landowner or his predecessor-in-title, shall be ejected on the grounds specified in sub-section (1)—

(a) from any area of land, if the area under the personal cultivation of the tenant does not exceed fifteen standard acres, or

(b) from an area of fifteen standard acres, if the area under the personal cultivation of the tenant exceeds fifteen standard acres."

"* * * *.

Explanation.—In computing the period of twelve years, the period during which any land has been held under the same landowner or his predecessor in title by the father, brother or son of the tenant shall be included."

(21) The tenant, who wants to acquire the proprietary rights has to make an application under Rule 14 of the Pepsu Tenancy and Agricultural Lands Rules, 1958, which says—

"14. *Application for acquisition of proprietary rights.*—A tenant intending to acquire proprietary rights under Chapter IV of the Act shall make an application in Form VI and such application shall be presented by him to the prescribed authority personally or through his recognised agent."

(22) As would be seen, the tenant has to make the application in form VI, which is as under:—

"Form of application for acquisition of proprietary rights by tenants.

To

——————————(Prescribed Authority)

——————————

Sir,

1. I am a tenant as defined in section 20 of the Pepsu Tenancy and Agricultural Lands Act, 1955, and hereby apply to acquire proprietary rights in the land comprising my tenancy, particulars of which are given in Table (A) enclosed.
2. I attach the following documents in proof of the fact that I am a tenant as defined in section 20 of the said Act.
3. I own/hold land particulars of which are given in Table (B) enclosed.
4. I solemnly affirm that the particulars given in the said Tables (A) and (B) are true to the best of my knowledge.
5. I, therefore, pray that compensation payable by me may be determined and instalments for payment thereof fixed.

Yours faithfully,

Dated ————— Signature or thumb-impression.

TABLE (A)

Serial No.	Name, parentage and address of applicant	Total area to be acquired (ordinary acres)	Village, Tehsil and District where land is situated	Khasra, Khewat and Khata Nos. of the land	Name, parentage and address of the landowner	Total area in column 3 converted into standard acres	Land Revenue and rates and cesses assessed on the land	REMARKS
1	2	3	4	5	6	7	8	9

(23) Before a tenant can make an application to acquire proprietary rights from his landowner in respect of the land comprising his tenancy, he has to satisfy the definition of the expression 'tenant' given in section 20 of the Act. The requirements mentioned in section 20 are—(i) that he must be a tenant as defined in clause (k) of section 2; and (ii) he should not be liable to be ejected either under clauses (a) and (b) of section 7A(1) or under clauses (a) and (b) of section 7A(2). In section 2(k), it has been stated that the 'tenant' has the meaning assigned to it under the Punjab Tenancy Act, 1887, but does not include a person (i) who holds a right of occupancy; or (ii) who is a relative of the tenant within the meaning of sub-clause (2) of clause (g). Section 7A gives some additional grounds for the termination of tenancy in addition to those mentioned in section 7. According to section 7A, if a person's tenancy subsists on 30th October, 1956 (which is the date of the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956), it can be terminated if (a) the land comprising his tenancy had been validly reserved by the landowner for his personal cultivation and also (b) the landowner owns 30 standard acres or less and the land comprising the tenancy falls within his permissible limit. Under section 7A(2), however, if the tenant can show that he had held any land continuously for a period of 12 years or more, preceding 3rd December, 1953 (which is the date of the commencement of the President's Act) either under the same landowner or his predecessor-in-title, he would not be ejected even on the grounds mentioned in sub-section (1) of this section from (a) any area of land if the tenant can establish that the area under his personal cultivation does not exceed 15 standard acres, or (b) an area of 15 standard acres if the tenant has under his personal cultivation an area exceeding 15 standard acres. It follows, therefore, that the tenant must hold some land continuously for a period of 12 years or more preceding 3rd December, 1953, before it can be said that he is not liable to be ejected either under section 7A(1)(a) and (b) or section 7A (2) (a) and (b) and thus answer the definition of the expression 'tenant' in section 20. Consequently, the tenant must hold a *particular* land continuously for the statutory period before he can claim proprietary rights therein. He would then be qualified to make an application under section 22(1) for acquiring proprietary rights *in that land* and under section 22(2) he would have to mention the area and the location *of that land*, in respect of which the application is made. The application has to be filed under rule 14 in form VI. The said form clearly

mentions that the Khasra, Khewat and Khata number of *that land* has to be given by the tenant to acquire proprietary rights in it.

(24) A combined reading of all these sections and the Rule would show that if a tenant is in possession of some land for more than 12 years, he can claim proprietary rights therein from the landowner. He has to mention the particulars of that land, namely, its Khasra, Khewat and Khata numbers, and the enquiry would then be made whether he was actually in possession of that land continuously for a period of 12 years or more under the same landowner or his predecessor immediately preceding 3rd December, 1953, which was the date of the commencement of the President's Act. The acquisition of proprietary rights has thus to be with regard to a particular piece of land. If a person has been a tenant of the same area of land under a landowner, but he was occupying different parcels of land though of the same area, he cannot acquire proprietary rights in any of such parcels. He has to be continuously in possession for the statutory period of same piece of land before he can claim proprietary rights therein. The said rights can be acquired with regard to a particular land, if he has been in possession thereof for the statutory period. No other interpretation is possible regarding these sections and the rule quoted above.

(25) The view that I have taken above finds support in *Lakshbir Singh* v. *Anant Ram and others* (5), where Harbans Singh J., observed—

"that section 7A of the Pepsu Tenancy and Agricultural Lands Act applies to a person, who is a small landowner.

That section 20 of the Pepsu Tenancy and Agricultural Lands Act makes it quite clear that a person, who applies under section 22 of the Act must be a tenant in his own right before he can apply under chapter IV of the Act, which means that he must be a tenant on the date of the application. The other qualification is that he should not be liable to ejectment under section 7A (2) of the Act. He must have held the land on 2nd December, 1953, continuously for a period of twelve years."

(26) The above decision was affirmed by the Letters Patent

(5) 1964 P.L.R. 610.

Bench reported as *Lakshbir* v. *Anant Ram* (6), wherein it was held:

> "The first requisite of section 20 of the Pepsu Tenancy and Agricultural Lands Act is that the person concerned is to be a tenant as that expression is defined in section 2(k) of this very Act, and there the definition of the word 'tenant' is the same, as in the Punjab Tenancy Act. The second requirement of section 20 is that such a tenant is not liable to ejectment either under clause (a) and (b) of sub-section (1) of section 7A, or under cllauses (a) and (b) of sub-section (2) of section 7A of this very Act."

(27) It may also be noted that Mr. Saroop Kishen, Financial Commissioner, Punjab, has taken a similar view in *Anup Singh* v. *Ralla Singh and others* (7), where he held:

> "That the tenant is not liable to ejectment from (and can obtain proprietary rights in) the land which he has held—continuously for a period of 12 years—" and the consideration that he has held some land or the other of the same area for the said period does not meet the requirements of the law. In other words the provision covers the particular parcel of land which has been held for 12 years, and is not related merely to the question of the area that has been held."

It is true that the learned Financial Commissioner has subsequently observed—

> "* * * it may of course be said that if the tenant has for a limited period or periods during these 12 years held other land of equivalent value in lieu of part of his holding in order to serve the convenience of the landowner or if there are other exceptional circumstances as in R. O. R. No. 8 of 1965-66, then the variation may be overlooked and the view may be taken that he is not liable to ejectment from such land. That, however, is a hypothetical consideration which can have no application in the present cases."

(28) These observations, as is clear, are mere *obiter*, even according to the learned Financial Commissioner himself.

(6) 1969 P.L.J. 176.
(7) 1966 Curr. L.J. 424.

(29) The learned Single Judge was of the view that the relevant provisions of law on this point were capable of two interpretations and, therefore, he refused to interfere with the impugned order of the learned Financial Commissioner under the writ jurisdiction of this Court. As I have already discussed above, no other interpretation is possible regarding the relevant section and the Rule. The order of the Financial Commissioner is, in my opinion, therefore, liable to be set aside.

(30) Faced with this situation, counsel for the State submitted that the Collector has given a finding that the tenant was in continuous possession of the same land for 12 years before 3rd December, 1953, and that order of his has been confirmed by the learned Financial Commissioner. In that connection, he referred to certain passages in the judgment of the Collector.

(31) I am unable to agree with this submission. From the following passage, which has been taken from the order of the Collector, dated 18th September, 1961, it is apparent that the case of the tenant was that he actually cultivated the same *equivalent lands,* and this assertion of his, according to the Collector, found support in the Jamabandi papers. The Collector was of the opinion that the Prescribed Authority had erred in law in considering that continuity of cultivating possession of *the same fields* was necessary for the conferment of proprietary rights on the tenant.

> "From the copies of the Jamabandis for the year 1953-54 and 1957-58 and Khasra Girdawaris 1955-56 to 1958-59 produced by the parties, it is abundantly clear that deliberate changes have been made in the Khasra Girdawaris from year to year between 1953-54 and 1957-58, wherein different fields were shown under the cultivation of the appellant and whereas he asserts that he actually cultivated the same equivalent lands from 1953-54 to 1957-58 and later to date. This assertion of the appellant finds support in the fact that according to Jamabandi for 1953-54 the total area of the tenancy of the appellant-tenant amounted to 49 bighas 17 biswas or 7.58 standard acres, while according to the Jamabandi 1957-58, the area in his cultivating tenancy was 61 bighas 2 biswas or 9.57 standard acres. Under section 44 of the Land Revenue Act, 1887, presumption of truth is attached to the entries in these Jamabandis. A careful perusal of the provisions

made in Chapter IV of the Pepsu Tenancy and Agricultural Lands Act, 1955, shows that the intention of the legislature was to confer proprietary rights on a tenant, whose tenancy subsisted under the same landowner at the commencement of the second amendment of the Pepsu Tenancy and Agricultural Lands Act, 1955, even if it might subsequently not be subsisting on the same land. What is actually necessary under section 7 A of the Pepsu Tenancy and Agricultural Lands Act is that the tenancy should subsist under the same landowner or his successor in interest of any part of his land. The respondent landowners have shown no reason why the plea put forth by the appellant tenant with regard to the deliberate changes made in the Khasra Girdawari in connivance with the Revenue Patwari with regard to the continued subsistance of his tenancy should not be accepted and why the tenancy of the appellant-tenant in a total area of 49 bighas and 17 biswas or 7.58 standard acres should not be declared as subsisting from 1953-54 onwards to date. The learned Prescribed Authority has obviously erred in considering that continuity of cultivating possession of the same fields was necessary for the conferment of proprietary rights on the tenant."

(32) I have reproduced the above passage from the order of the Collector in Letters Patent Appeal No. 300 of 1970, because I noticed that in Letters Patent Appeal No. 299 of 1970, a correct copy of the order of the Collector had not been filed.

(33) The view that I have taken is further strengthened from the following observations of the learned Financial Commissioner in the impugned order:—

"The tenant-respondents, in both cases, based their claim to proprietary rights on continuous occupation of the land in question. The petitioner landowners, in both cases, became owners by purchase some time after the commencement of the President's Act of 1953, when the respondent-tenants were already on the land. The learned Collector found, in both cases, clear evidence of deliberate changes having been made in the Khasra Girdwari from year to year between 1953-54 and 1957-58 in order to spoil

the tenants' case for acquisition of proprietary rights. The Jamabandi was, however, not tampered with. These changes, as pointed out by the learned Collector, were obviously made by the Patwari at the instance of the landowners, so that the continuity of possession could be broken. However, there is the evidence of the Jamabandi to show that these defendants-tenants were in possession before the petitioner-landowners became owners of these lands and that although their fields numbers were frequently changed, they were tenants over a constant area and under the same landowners throughout the requisite period. The learned Collector, therefore, rightly decided to grant the respondent tenants proprietary rights in the entire area for which they had applied. I see no reason to take different view of the evidence. Both petitions are, therefore, rejected."

(34) It will be seen from the above passage that the learned Financial Commissioner was also of the same view as the Collector that it was not necessary for the tenants to show that they had been in continuous occupation of the same field numbers for the statutory period in order to acquire proprietary rights therein and it was enough if the continuity of their possession was over the *same area.*

(35) It is noteworthy that in all these Letters Patent Appeals, the area in possession of the tenant in Jamabandi (1953-54) was different from the one in the Jamabandi (1957-58). The tenant had been given proprietary rights in the lesser of the two areas, irrespective of the fact whether the same was mentioned in the later or earlier Jamabandi and no attention was paid to the question as to whether any particular Khasra numbers had remained continuously in possession of the tenant for 12 years or more immediately preceding 3rd December, 1953, before granting proprietary rights to him.

(36) In view of what I have said above, this appeal is accepted, the judgment of the learned Single Judge is set aside and the impugned order of the Financial Commissioner quashed. The parties will, however, bear their own costs.

S. S. SANDHAWALA, J.— I agree.

K.S.K.