rent would be an impractical thing. When after sometime the matter is finally decided and the landlord has to pay house-tax for the back period, whether in such circumstances the exercise of the right by him under section 9 to increase rent will cover the period thus gone by and non-payment of house-tax would be taken as arrears of rent for the matter of eviction of the tenant or not is a question which can only be considered when it actually arises. In the circumstances of the present case no such situation arises. So the applicant cannot treat, in the facts of this case, the house-tax paid by her with regard to the period earlier to the date of the demand notice on March 11, 1966, as arrears of rent because the exercise of the right of the applicant under section 9 to increase rent is not operative prior to that date. Almost exactly the same question arose before Mahajan, J., in *Hari Krishan* v. *Dwarka Dass* (1), and the learned Judge was of the same opinion and held that house-tax levied earlier to the date of the demand notice was not to be treated as arrears of rent so far as the ground of eviction on the basis of non-payment of arrears of rent is concerned.

(6) In consequence, the orders of the authorities below are set aside, and the case is remitted back to the Rent Controller to dispose of on merits in the light of observations above. There is no order in regard to costs in this revision application. The parties, through their counsel, are directed to appear before the Rent Controller on December 16, 1968.

K.S.K.

APPELLATE CIVIL

Before S. B. Capoor and R. S. Narula, JJ.

HARDEV SINGH AND OTHERS,—*Appellants*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

L.P.A. 184 of 1964

November 28, 1968

The Punjab Security of Land Tenures Act (X of 1953)—*Section* 27—*The Punjab Security of Land Tenures Rules* (1956)—*Rule* 6(3)—*Proceedings for determination of surplus area of a landowner—Notice to persons likely to be prejudicially affected by—Whether mandatory—Entire proceedings—Whether vitiated for want of such notice.*

(1) C. R. 755 of 1966 decided on 4th November, 1968.

Held, that the requirements of service of notice on all persons interested under sub-rule (3) of rule 6 of The Punjab Security of Land Tenures Rules are based on principles of natural justice requiring an opportunity being afforded to any person who is likely to be prejudicially affected by an order which migth be passed in the relevant proceedings. The want of such a notice cannot be dispensed with or ignored on the mere ground that particular transferees or tenants who may otherwise be deemed to be the persons interested in the proceedings have really no good defence to the proposed order. It is no doubt correct that the Punjab Security of Land Tenures Act, 1953, nor the Rules require the Circle Revenue Officer or the Collector to hold an investigation into who can be the possible persons interested in the proceedings before them. It is, therefore, manifest that notice under rule 6(3) of the Rules has to be issued in the proceedings before the Circle Revenue Officer only to such persons whose names may be mentioned in form 'D' prepared by the Patwari or whose names may be shown in the relevant revenue records available to the Circle Revenue Officer either as vendees or donees or other transferees or tenants of the land which is proposed to be included in the surplus area of the original landowner. The entire proceedings for determination of surplus area of the original landowner are vitiated for want of notice to the above said persons. (Para 9)

Appeal under Clause 10 *of the Letters Patent against the judgment of the Hon'ble Mr. Justice Jindra Lal, dated* 1*st April,* 1964, *passed in C.W. No.* 1809 *of* 1963.

H. S. Gujral, Advocate, for the Appellants.

J. C. Verma, Advocate for the Advocate-General (Haryana), for the Respondents.

JUDGMENT

Narula, J.—Arguments have been advanced to us in this Letters Patent Appeal of the unsuccessful writ petitioners against the judgment of a learned Single Judge of this Court on the following two points only—

(i) an order passed by a Collector under sub-rule (6) of rule 6 of the Punjab Security of Land Tenures Rules, 1956 (herein after called the 1956 Rules), framed under section 27 of the Punjab Security of Land Tenures Act, 1953, hereinafter referred to as the Act, declaring the surplus area of a landowner without the issuance and service of a notice requisite under sub-rule (3) of rule 6 by the Circle Revenue Officer to persons concerned whose interest in the declaration of the surplus area of the landowner is apparent from the

entries in the relevant revenue record, is vitiated and is liable to be struck down as having been passed in violation of the mandatory requirements of the said rule; and

(ii) the effect of amendment of section 19-B(1) of the Act by section 6 of the Punjab Security of Land Tenures (Amendment) Act No. 14 of 1962, read with section 2 of the said amending Act is that the acquisition by gift of a part of the landowner's holding by an heir of a landlord after the 1st of April, 1953, and before the 30th of July, 1958, cannot be ignored and the land forming the subject-matter of the gift is entitled to be treated as the permissible area of the donee and cannot be included in the permissible or surplus area of the donor. In other words, the addition of the words "subject to the provisions of section 10-A" in section 19-B is not merely by way of clarification but is intended to give over-riding effect to the provisions of section 10-A on and with effect from and in respect of the gifts made only

(2) The facts giving rise to the filing of this appeal may now be surveyed. All the three appellants, hereinafter called the petitioners, are sons of Ranjit Singh, to whom I will refer in this judgment as the landowner. The landowner held a large holding in village-Masitan, tahsil Sirsa, district Hissar. It is the case of the petitioners that they were tenants of the landowner in respect of 150 Bighas of land out of the holding of the latter, and that sometimes before the coming into force of the Act in 1953, the landowner had made on oral gift of the said 150 Bighas in favour of the petitioner. In any case, the fact remains that mutation in respect of the alleged gift was sanctioned in favour of the petitioners by the Revenue Authorities on December 26, 1954, and it is not disputed that entries in respect of the said gift had consequently been made in the relevant revenue records.

(3) The Patwari of the estate concerned prepared a statement in form 'D' in respect of the holding of the landowner as required by sub-rule (1) of rule 6 of the 1956 Rules. When the said statement reached the Circle Revenue Officer (referred to as C.R.O. in the order of the Collector, dated February 24, 1961), the landowner appeared before him and gave a statement. The landowner claimed to take into account certain alienations made by him including the alleged gift in favour of the petitioners. The Circle Revenue Officer admittedly did not issue any notice to the petitioners who were shown as the donees

in pursuance of the mutation entry sanctioned on December 26, 1954, and without affording any opportunity to the petitioners to be heard (the Circle Revenue Officer) submitted his report, dated February 24, 1961, along with form 'D' which had been prepared by the Patwari, to the Collector, Sirsa. The land-owner again appeared before the Collector and made a statement. The Collector by his order, dated February 24, 1961 (Annexure 'B' to the writ petition), took notice of the relevant contentions of the land-owner who held that while assessing his surplus area, the transaction in question would have to be ignored. After leaving the permissible area of 30 Standard Acres with the land-owner, the Collector declared 90.29 ordinary acres (corresponding to 62.32 Standard Acres) as the surplus area of the land-owner, and directed that form 'F' be prepared under sub-rule (7) of rule 6 of the 1956 Rules for further necessary action. After the above-said decision of the Collector, the petitioners obtained a consent decree against the land-owner on March 20, 1961, declaring the petitioners to be tenants-at-will in respect of the land in disputes under the land-owner with effect from Kharif 1951, till 1954, whereafter they had become co-sharers with the land-owner,—*vide* mutation of gift, dated December 26, 1954. It was at one stage claimed that the decree of the Civil Court further directed that entries in the Khasra Girdawari for Kharif 1951 till February, 1954, in respect of the land mentioned in the plaint may be corrected accordingly. Thereafter the petitioners prepared an appeal under sub-rule (8) of rule 6 against the order of the Collector to the Commissioner, Ambala Division, as their land had been included by the Collector in the surplus area of the land-owner. In their petition of appeal, dated June 7, 1961 (Annexure 'C' to the writ petition), it was urged that the Collector should not have disregarded the gift in respect of which the mutation had been sanctioned in December, 1954, in favour of the petitioners, particularly because the expression "surplus area" did not find any place in the Act till then. In the alternative it was pleaded that the land in dispute should be exempted from being declared surplus of the land-owner as the same would form the permissible area of the petitioners in view of the fact that they had been in cultivating possession thereof as tenants since before April 15, 1953, and that though their names had been entered as co-owners with the land-owner in the revenue records, the declaration of surplus area of the land-owner had been made adversely affecting the rights and interests of the petitioners without giving them any notice and without hearing them. The appeal of the petitioners was dismissed by the order of the Commissioner, Ambala Division, dated July 24, 1961 (Annexure 'D'), and the

alienation by way of gift in favour of the petitioners was ignored on the ground that the position of the holding of a landowner for the purposes of declaring his surplus area is to be seen as it stood in the revenue record on April 15, 1953, and all subsequent transfers have to be ignored as required by section 10-A(b) of the Act. The claim of the petitioners regarding their having been in cultivating possession of the land in dispute as tenants was turned down with the following observations:—

> "According to him (according to the counsel for the petitioners) the land held by the tenants should be exempted from being declared surplus. He has, however, not been able to substantiate his contention on the basis of any documentary evidence. The rights of old tenants are fully safeguarded under the Act and nobody can disturb them."

(4) Though the petitioners were entitled to go up to the Financial Commissioner for revision against the abovementioned order of the Commissioner, they admittedly did not do so. On March 5, 1962, they submitted an application under section 18 of the Act to purchase land in dispute on the ground that they had been the tenants thereof for more than six years. The said application of the petitioners was dismissed by the order of the Assistant Collector, First Grade, Sirsa, dated June 27, 1962 (Annexure 'A' to the writ petition) in spite of the fact that the land-owner who was the solitary respondent in the case had agreed to the grant of the application and the parties had filed a written compromise whereunder the application of the petitioners for purchase of the land in dispute was required to be allowed. The Assistant Collector refused to accept the compromise on the ground that the petitioners did not appear to be genuine tenants of the landowner. The entries in the Khasra Girdawari had been so corrected as to conform to the claim of the petitioners. The decree of the Civil Court, dated March 20, 1961, was ignored on the ground that it was obviously a collusive decree and that it was not based on any adjudication of the Civil Court on merits. It was further observed that neither the Civil Court could order the correction of a Khasra Girdawari nor had it in fact been so done, and that the change in the entries had been wrongly made by the Patwari himself on the basis of the decree of the Civil Court. On merits the claim of the petitioners was turned down on the ground that even if the correct Khasra Girdawaris were taken into account, they showed the cultivating possession of the petitioners only for the period Kharif 1951 to

1954, and that for the subsequent period they could not even claim to be tenants as they claimed to have become co-owners with the landowner after December, 1954, on account of the mutation of gift.

(5) It was in the abovesaid circumstances that the petitioners came up to this Court under Articles 226 and 227 of the Constitution in October, 1963, to get quashed the order of the Assistant Collector, dated June 27, 1962 (Annexure 'A'), and to direct the Assistant Collector to order the sale of the disputed land in favour of the petitioners under section 18 of the Act. It was further prayed that the respondents may be restrained from interfering with the possession of the petitioners over the land in dispute.

(6) In the return of the respondents the mutation of the fift having been sanctioned on December 26, 1954, was admitted, but the same having been ignored was justified on the ground that the said transfer had been effected after the passing of the Act. Regarding the attack on the impugned orders declaring the surplus area of the landowner without service of notice on the petitioners, it was averred that "no notice was required to be issued to the petitioners as they were not the owners of the land in question on April 15, 1953." The possession of the petitioners as tenants was denied. The impugned orders were justified under the provisions of section 10A(b) of the Act and reliance for the orders under attack was placed on the fact that section 19-B has been made subject to section 10-A of the Act.

(7) The facts relevant for deciding the first contention of the learned counsel are not in dispute and have already been narrated above. From those facts it is clear that form 'D' was actually prepared by the Patwari in this case, that the Circle Revenue Officer had held an enquiry, that the landowner appeared before the Circle Revenue Officer and informed him of the alienation in dispute, that mutation in respect of the gift had already been sanctioned, and the relevant records did contain an entry about the same. Nor can it be disputed that the inclusion of the land in possession of the petitioners in the surplus area of the landowner would naturally have prejudicially affected the petitioners, and that, therefore, the petitioners were and are persons interested in the matter. It is also admitted that the Circle Revenue Officer did not issue any notice required by sub-rule (3) of rule 6 of the 1956 Rules to the petitioners. The question then is whether the order of the Collector declaring surplus area of the

landowner in these circumstances is liable to be set aside or not. Section 10-A of the Act reads as follows:—

"(a) The State Government or any officer empowered by it in this behalf, shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of section 9.

(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 a 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.

(c) For the purposes of determining the surplus area of any person under this section, any judgment, decree or order of a Court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored."

Section 19-B of the Act before its amendment in 1962 was in the following terms:—

"(1) If, after the commencement of this Act, any person, whether as landowner or tenant, acquires by inheritance or bequest or gift from a person to whom he is an heir any land or if after the commencement of this Act and before the 30th July, 1958, any person has acquired by transfer, exchange, lease, agreement or settlement any land, which with or without the lands already owned or held by him, exceeds in the aggregate the permissible area, then he shall, within the period prescribed, furnish to the Collector, a return in the prescribed form and manner giving the particulars of all lands and selecting the land not exceeding in the aggregate the permissible area which he desires to retain, and if the land of such person is situated in more than one *Patwar* circle, he shall also furnish a declaration required by section 5-A.

(2) If he fails to furnish the return and select his land within the prescribed period, then the Collector may in respect of him obtain the information required to be shown in the return through such agency as he may deem fit.

(3) If such person fails to furnish the declaration, the provisions of section 5-C shall apply.

(4) The excess land of such person shall be at the disposal of the State Government for utilization as surplus area under clause (a) of section 10-A or for such other purposes as the State Government may by notification direct."

Section 6(1) of the Amending Act stated as follows:—

"In section 19-B of the principal Act,—

(1) in sub-section (1), for the words 'if, after the commencement of this Act, any person, whether as landowner or tenant, acquires by inheritance or bequest or gift from a person to whom he is an heir any land or if after the commencement of this Act and before the 30th July, 1958, any person has acquired by transfer, exchange, lease, agreement or settlement any land', the following words shall be substituted, namely:—

'Subject to the provisions of section 10-A, if after the commencement of this Act, any person, whether as landowner or tenant, acquires by inheritance or by bequest or gift from a person to whom he is an heir any land, or, if after the commencement of this Act and before the 30th July, 1958, any person has acquired by, transfer, exchange, lease, agreement or settlement any land, or if, after such commencement, any person acquires in any other manner any land,';

The question of the retrospective operation to be given to some of the provisions of the Amending Act was not left in doubt and was expressly provided for in sub-section (2) of section 1 of the Amending Act in the following words:—

'Clause (a) of section 2, section 4, section 5, section 7 and section 10 shall be deemed to have come into force on the 15th day of April, 1953, clause (b) of section 2 and section 6 shall be deemed to have come into force on the 30th day of July,

1958, and the remaining provisions of this Act shall come into force at once."

The above quoted provisions of law are the only ones which are relevant for appreciating the contentions raised before us by the learned counsel for the parties.

(8) In support of his first submission relating to the effect of non-compliance with sub-rule (3) of rule 6 of the 1956 Rules reference was firstly made by Mr. Gujral to the following four decisions of the various Financial Commissioners:—

(1) Order of Shri A. L. Fletcher, Financial Commissioner Revenue, dated June 18, 1964, in *Mona Ram* v. *The Punjab State and another* (1). The learned Financial Commissioner held in that case that rule 6 is meant to be strictly observed and where it is not, the proceedings must be termed illegal. It was observed that a purchaser of the land is a person concerned within the meaning of the abovesaid rule, and opportunity of being heard must be given to him before the area purchased by him is declared as surplus;

(2) Order of Shri Saroop Krishan, Financial Commissioner Planning, dated July 1, 1964, in *Inderjit* v. *The Punjab State and another* (2). Mr. Saroop Krishan, held in that case that rule 6 being a mandatory one, non-compliance with it constitutes a material irregularity in procedure which makes interference in revision essential;

(3) *Harbhajan Singh, etc.*, v. *The State of Punjab, etc.* (3), wherein Mr. Saroop Krishan, held on February 20, 1965, that transferees, who had not been given notice of the surplus area proceedings were entitled to such a notice and failure to comply with the said requirement constitutes such a material irregularity of which notice could be taken in revision even if the objection was raised with delay;

(4) Decision of Shri A. N. Kashyap, Financial Commissioner Taxation, in *Jammu Ram, etc.* v. *The State, etc.* (4). The learned Financial Commissioner, held that at the time of

(1) 1964 L.L.T. 84.
(2) 1964 P.L.J. 174.
(3) 1965 P.L.J. 74.
(4) 1967 L.L.T. 86.

declaring any land surplus with the land-holder, notice should be given to all the persons concerned such as tenants, etc.

Counsel then referred to the under-mentioned judgments of this Court in their chronological order:—

(1) Judgment of Shamsher Bahadur, J. in *Ghamandi Lal and others* v. *The State of Punjab and others* (5). In that case, however, no notice had been served either on the land-owner or his sons, who were claiming interest in the land though a notice had been issued to the landowner himself. The learned Judge observed that clause (3) of rule 6 enjoins on the Circle Revenue Officer a duty to make an enquiry referred to in that rule "after giving persons concerned an opportunity of being heard before forwarding his report to the Collector," and again under sub-clause (6), the Collector is required to give landlord or a tenant an opportunity of being heard before assessing the surplus area, and inasmuch as no notice had been served, the proceedings before the revenue authorities suffered from this fatal infirmity;

"(2) In *Indraj Singh and others* v. *The State of Punjab and others* (6), the same learned Judge (Shamsher Bahadur, J.) held that the provision of notice under rule 6 is imperative and the pre-emptors who were entitled to receive such notice and were entitled to be heard before the order for declaration of surplus area was passed not having received such a notice, the orders of the revenue authorities were liable to be set aside in spite of the fact that the father of the pre-emptors was present and the pre-emptors were his own sons;

(3) In *Shrimati Pari and another* v. *State of Punjab and others* (7), I held that rule 6 requires the Collector to assess the surplus area after such enquiry as he thinks fit, and in holding such an enquiry he is bound to hear the landowner and the tenant, and has to decide the objections filed by them by a written order. I further held that in view of the contents

(5) 1965 P.L.J. 24.
(6) 1965 P.L.J. 66.
(7) 1966 P.L.R. 844.

of the prescribed form 'D', which is prepared by the Patwari, it is necessary that notice should be issued to the tenants as well as the transferees whose names are mentioned in the said form 'D' as they are the persons interested within the meaning of rule 6(3). Inasmuch as no notice under sub-rule (3) of rule 6 had admittedly been issued in that case though the names of the tenants and the transferees were available in the revenue records, and were even mentioned in form 'D', I allowed the writ petition of Shrimati Pari and another, and set aside the orders whereunder the surplus area of the original landowner had been determined in that case.

(9) The decision in the judgment of the Full Bench of this Court in *Pritam Singh and others* v. *The State of Punjab through Secretary, Revenue Department, Chandigarh and others* (8) to the effect that no question of service of any notice regarding the declaration of surplus area to the transferees arises under section 32-FF of the PEPSU Tenancy and Agricultural Lands Act as the transferred property would not vest in the transferees and such persons would not be deemed to be the owners of the property, was distinguished by the learned counsel for the petitioners on the ground that the transferees did not cease to be owners of the land under the Punjab Act, and it is only the right to settle tenants on the land which vests in the Government in respect of the transferee under the Act, as distinguished from the PEPSU Act, where the entire right as well as the interest of the transferee in the surplus area of a landowner stands completely washed out and vests absolutely in the State. I had myself an occasion to deal with this matter in *Bool Chand and others* v. *State of Punjab and others* (9). After referring to the previous judgments of this Court wherein it had been held that want of service of notice on a person interested under rule 6(3) vitiates the proceedings for determination of surplus area, I dealt with the argument of the other side based on the Full Bench judgment in *Pritam Singh's case* (supra) (8) in the following words:—

"It has been pointed out that the Full Bench judgment of this Court in *Pritam Singh and others* v. *The State of Punjab and others* (8), relates to the Pepsu Tenancy and Agricultural Lands Act (13 of 1955) and not to the Punjab Act

(8) I.L.R. (1966) 1 Pb. 707=1966 LL.T. (Rev. Rul.) 65=1966 P.L.J. 83, (F.B.).

(9) C.W. 357 of 1964 decided on 4th October, 1968. (1968 P.L.J. 360)

that the distinction in the two Acts in this respect is apparent from the discussion of the relevant provisions of the Pepsu Act in paragraph 14 of the Full Bench judgment in *Pritam Singh's case* (8). The main difference between the two Acts is that whereas the landowner is divested of his surplus area under the Pepsu Act, he remains the owner under the Punjab Act and merely his right to cultivate the said land himself or to settle his own tenants thereupon is taken away from the landowner."

Learned counsel for the respondents could not point out any fallacy in the distinction between the relevant positions created in this respect by the Punjab Act on the one hand and Pepsu Act on the other. So far as the Punjab Act is concerned, no judgment of this Court, and not even a decision of any Financial Commissioner has been cited to us wherein a view contrary to that canvassed by Mr. Gujral before us might have been taken. Even otherwise, the requirement of service of notice on all persons interested under sub-rule (3) of rule 6 of the 1956 Rules appears to us to be based on principles of natural justice requiring an opportunity being afforded to any person who is likely to be prejudicially affected by an order which might be passed in the relevant proceedings. The want of such a notice cannot be dispensed with or ignored on the mere ground that particular transferees or tenants who may otherwise be deemed to be the persons interested in the proceedings have really no good defence to the proposed order. It is no doubt correct that neither the Act nor the 1956 Rules require the Circle Revenue Officer or the Collector to hold an investigation into who could be the possible persons interested in the proceedings before them. It is, therefore, manifest that notice under rule 6(3) has to be issued in the proceedings before the Circle Revenue Officer only to such persons whose names may be mentioned in form 'D' prepared by the Patwari or whose names may be shown in the relevant revenue records available to the Circle Revenue Officer as either vendees or donees or other transferees or tenants of the land which is proposed to be included in the surplus area of the original landowner. In the present case it is admitted that the names of the petitioners had been entered in the revenue record as donees of the disputed land on account of the sanction of the mutation of the gift, and that relief on account of the said alienation had been claimed by the landowner before the Circle Revenue Officer. We, therefore, hold that the entire proceedings for determination of the surplus area of the original landowner in so far as it relates to the land forming the subject-matter of the gift deed in

favour of the petitioners is concerned, are vitiated by the abovementioned apparent error of law which has prejudicially affected the petitioners.

(10) Learned counsel for the respondents could not say much in reply to the merits of the first contention of Mr. Gujral, but vehemently submitted that we should decline to interfere in the discretion exercised by the learned Single Judge in refusing to allow the writ petition against the original order of the Collector, dated February 24, 1961, and the appellate order of the Commissioner, dated July 24, 1961, on the ground that the petitioners had not exhausted the alternative remedy available to them by going up in revision against the appellate order. It is no doubt true that this Court would not normally interfere in the exercise of its jurisdiction under clause 10 of the Letters Patent with a discretionary order of a learned Single Judge, and if the learned Single Judge had not himself gone into the merits of the contention raised by the petitioners, we would have decline to interfere with the exercise of that discretion, and would not have ourselves proceeded to decide the contentions on merits for the first time in appeal. In this case, however, the learned Single Judge having dealt with the matter on merits, it would in our opinion be unfair to the petitioners to decline to give them relief to which they are otherwise entitled merely because they did not exhaust every possible alternative remedy available to them. It is, therefore, held that the petitioners are entitled to succeed on the first point.

(11) In view of our decision on the first point which goes to the root of the matter, it is unnecessary to discuss the submissions made by the learned counsel for the parties on the second point. The decisions of the three earlier Division Benches of this Court in the *State of Punjab and others* v. *Bhalle Ram and others* (10), *Bhagat Gobind Singh* v. *Punjab State and others* (11) *and Hans Raj and others* v. *The State of Punjab and others* (12), on the second contention of Mr. Gujral are really against the interest of his clients. He has, however, contended that subsequent to all the abovesaid decisions, Mahajan, J. sitting in Single Bench held to the contrary in *Gurcharan Singh and others* v. *The State of Punjab and another* (13) on consideration of certain matters which were not before the earlier

(10) 1963 P.L.J. 65.
(11) I.L.R. (1963) 1 Pb. 500=1963 P.L.R. 105.
(12)) 1967 Cur. L.J. Pb. & Hyna. 804.
(13) 1967 L.L.T. (Revenue Rulings) 155.

Division Benches. Mr. Gujral states, that the second point now urged by him is before a Full Bench on account of the abovesaid controversy. This is an additional reason why we abstain from expressing any opinion on the second submission of Mr. Gujral.

(12) For the foregoing reasons this appeal is allowed, the judgment and order of the learned Single Judge are set aside, and the writ petition is granted. The result is that the impugned orders of the Collector, dated February 24, 1961, and of the Commissioner, dated July 24, 1961, (in so far as they relate to the land gifted to the petitioners) are set aside. This order would not, however, debar the appropriate authorities from redetermining the surplus area if any, of the landowner and/or of the petitioners in accordance with law. In the circumstances of the case, we make no order as to costs.

S. B. CAPOOR, J.—I agree.

R. N. M.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

GORDHAN DASS,—*Plaintiff Petitioner*

versus

SANJHA RAM,—*Defendant-Respondent*

Civil Revision 265 of 1967

November 29, 1968.

Punjab Tenancy Act (XVI of 1887)—Sections 36 and 77(3)(n)—Tenancy of agricultural land—Tenant ceasing to be in possession of the land—Suit by landlord for arrears of rent or the money equivalent thereto—Whether triable by Revenue Courts.

Held, that Sections 36(3) of the Punjab Tenancy Act provides that where a tenant quits without notice, according to section 36(1), he is liable to pay rent if the other conditions in sub-section (3) of that section are satisfied. This express provision has been made for liability of a tenant for rent after he has given up possession of the land under the tenancy, in other words, his liability to pay rent remains in spite of his having ceased to be a tenant. A suit for the recovery of such arrears of rent comes only under section 77(3)(n) of the Act. Inspite of the tenant, having given up possession of the land and having ceased technically to be