this case. The learned counsel has lastly urged that when a defendant's defence is struck off under Order 11, rule 21, as in the present case, the defendant is expelled from the proceedings, but this is only a different way of repeating the same argument and it comes to nothing as he either voluntarily does not appear to defend the claim against him or is debarred by an order of the Court from doing so, yet after a decree has been made against him, he has been given a right of appeal against the decree under section 96 of the Code, there being nothing which takes away such a right of appeal or renders an appeal on the part of such a defendant incompetent. The learned counsel for the appellant was unable to refer to any provision either in the Code of Civil Procedure or in any other law which has taken away the right of appeal of the defendants in this case.

(7) So obviously the learned Additional District Judge was wrong in reaching the conclusion that the defendants' appeal before him was not a competent appeal. The learned counsel for the defendants has lastly turned round and said that the Additional District Judge at the stage of the first appeal did not merely say that the appeal was not competent but he said that there was no merit in the appeal itself, so that he disposed of the appeal of the defendants on merits also. This is not so. The operative part of the judgment and order of the Additional District Judge has already been reproduced above and it is apparent that he dismissed the appeal of the defendants as not competent and did not go into the merits of the matter.

(8) In the approach as above, the present appeal of the appellant fails and is dismissed with costs.

B. R. TULI, J.—I agree.

K.S.K.

APPELLATE CIVIL

Before Mehar Singh, C.J. and B. R. Tuli, J.

GURBACHAN SINGH, etc.,—*Appellants.*

versus.

FINANCIAL COMMISSIONER, PUNJAB, etc.,—*Respondents.*

L. P. A. No. 208 of 1967

April 28, 1970.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section *7-A—Termination of tenancy under—Conditions in clause (b) of the section—Compliance of—Whether essential—Words "the land" in second part*

of the clause—Whether refers to the land of which termination of tenancy sought—Ground for termination of tenancy—Whether to exist on the date of application under section 7-A.

Held, that under clause (b) of Section 7-A(1) of Pepsu Tenancy and Agricultural Lands Act, 1955, an application for the termination of the tenancy must satisfy both the conditions in the clause i.e., (a) that the land-owner owns thirty standard acres or less of land and (b) that the land falls within his permissible limit. The context of the first part of clause (b) limits the meaning and scope of this expression 'landowner' to a person owning thirty standard acres or less. The words 'the land' in the second part of the clause refer to the land of the tenancy of which termination is sought under the provisions of section 7-A. The landowner may own thirty standard acres or less and then his holding may be beyond the permissible limit of thirty standard acres, because he may have in his possession land mortgaged with him. Hence for a landowner who wishes to obtain benefit of clause (b) of sub-section (1) of Section 7-A of the Act, he must satisfy both parts of that clause.

Held, that the availability of the ground for termination of the tenancy under section 7-A of the Act is to be considered on the date of the application under the provision. The application is competent and good if on the date on which it is made, the ground for termination is available to a landowner. It is conceivable that although a landowner may have had more area of land with him than his permissible limit earlier, but by the time he comes to make an application under section 7-A of the Act for their termination of the tenancy of a tenant under him, he may have lost much of that area either by redemption of mortgated area or by other transfers permissible according to law and on the date of such application the land in his possession is within the permissible limit.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 18th May, 1967, delivered by Hon'ble Mr. Justice R. S. Narula in C.W. *No.* 1620 of 1964.

TIRATH SINGH, ADVOCATE, for the appellants.

D. S. NEHRA AND K. S. NEHRA, ADVOCATES, for the respondents.

JUDGMENT

MEHAR SINGH, C.J.—The appellants, Gurbachan Singh and Karam Singh, have been tenants of the land, subject of controversy in this litigation, under the landlords, Pritam Singh, Harbans Singh and Tejinder Singh, respondents 2 to 4, the first respondent in this appeal being the Financial Commissioner of Punjab.

(2) The parties belong to village Naiwala in Tehsil Barnala of Sangrur District, within the revenue estate of which the land in the tenancy of the appellants is situate. The area was part of the former Pepsu State. On November 18, 1953, the Patiala and East Punjab States Union Tenancy and Agricultural Lands Act, 1953 (Pepsu Act 8 of 1953), came into force. In this Act, section 2(f) defines the expression 'landowner' to have "the meaning assigned to it in the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887), and includes an allottee", and 'permissible limit', according to section 3, is "thirty standard acres of land and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres", while sections 5 and 6 deal with reservation of land by a landowner for personal cultivation, and starting from section 7 there are provisions in Chapter III of this Act for protection of tenants stating clearly the grounds upon which alone eviction can be obtained. Respondents 2 to 4 never made any reservation according to sections 5 and 6 of this Act. They have not made any such claim at any stage. Section 7 of this Act gives the grounds for termination of a tenancy, and it is not denied on either side that respondents 2 to 4 could not have terminated the tenancy of the appellants according to that provision.

(3) This act was replaced by the Pepsu Tenancy and Agricultural Lands Act, 1955 (Pepsu Act 13 of 1955), which came into force from March 6, 1955. In this Act, section 2(i) defines the expression "landowner" to have "the meaning assigned to it in the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887), and includes an allottee; Explanation.—In respect of land mortgaged with possession, the mortgagee shall be deemed to be the landowner". This explanation was inserted in this Act by the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, which came into force from October 30, 1956. So according to the definition of the expression 'landowner' in section 2(f) of this Act, a person who—(a) owns land is a landowner, and (b) is a mortgagee of land with possession is a landowner. Sections 5, 5-A and 6 of this Act also deal with the subject of reservation of land for personal cultivation by a landowner, but, as stated, it has never been the case of respondents 2 to 4 that any such reservation was made by them under those provisions.

(4) It has been the common case of the parties that on October 30, 1956, respondents 2 to 4 held more than thirty standard acres of

land consisting of ownership land and land under mortgage with them as mortgagees. It is also accepted on both sides that on that date the appellants were tenants under respondents 2 to 4 or their predecessor on that date and even earlier to that. In their petition under Articles 226 and 227 of the Constitution, filed by the appellants on August 6, 1964, they said that they had been tenants of the land under respondents 2 to 4 for more than twenty years. Reckoning twenty years backwards from 1964, they were tenants under those respondents from about the year 1944, and Pepsu Act 8 of 1953 came into force on November 18, 1953. So by that date they had been tenants under those Respondents for about nine years. There is no finding by any of the revenue authorities in this case that their tenancy was for a period longer than that prior to the date of the coming into force of Pepsu Act 8 of 1953.

(5) On January 6, 1961, respondents 2 to 4 made an application under section 7-A(1) (b) of Act 13 of 1955 for termination of the tenancy with the appellants and for their eviction. Section 7-A was introduced in this Act by section 8 of Pepsu Act 15 of 1956. It has given a new and additional ground of eviction to landowners on and from October 30, 1956. Section 7-A of Pepsu Act 13 of 1955 reads—

> "7-A. (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 shall be ejected under this subsection—
>
> (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.

(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:

Provided that nothing in this sub-section shall apply to the tenant of a landowner who, both at the commencement of the tenancy and the commencement of the President's Act, was a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity.

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.

(3) For the purpose of computing under sub-sections (1) and (2) the area of land under the personal crltivation of a tenant, any area of land owned by the tenant and under his personal cultivation shall be included."

The stand of respondents 2 to 4 was that the land with them has been within their permissible limit and according to section 7-A (1)(b) they were entitled to terminate the appellants' tenancy and

to eject them. The reply of the appellants has been that they have been old tenants under those respondents and their predecessor, that the land with those respondents has been more than their permissible limit, and that, in any case, they were entitled to remain in possession as tenants of five standard acres until similar area was provided to them in accordance with the proviso to sub-section (1) of section 7-A.

(6) The application of respondents 2 to 4 was dismissed by the Assistant Collector of the First Grade on May 16, 1962, he having found that on October 30, 1956, the date of enforcement of Pepsu Act 15 of 1956, respondents 2 to 4 held more land than the permissible limit of each one of them and so section 7-A(1)(b) was not attracted to the case. Their appeal to the Collector, Sangrur, also failed and was dismissed on December 31, 1962. A revision application against that order to the Commissioner by respondents 2 to 4 failed on April 30, 1963, the Commissioner rejecting an argument on the side of those respondents that land mortgaged with them was not to be included in their holding so as to deny them their right of termination of tenancy of the appellants under section 7-A(1)(b) on the ground that a mortgagee is a landowner according to section 2(f) of Pepsu Act 13 of 1955. The Commissioner pointed out that the rights of the parties were to be seen on the date of the coming into force of the President's Act, which was Pepsu Act 8 of 1953, and which came into force on November 18, 1953. He found that on that date, including the land mortgaged with them, respondents 2 to 4 had more than thirty standard acres each, and thus they were not entitled to the advantage of section 7-A(1)(b) and that the subsequent redemption of part of the mortgaged land did not affect the rights of the appellants as tenants. There was a further revision application by respondents 2 to 4 before the Financial Commissioner, which succeeded on July 19, 1964, the learned Financial Commissioner being of the opinion that although section 2(f) of Pepsu Act 13 of 1955 includes a mortgagee in the definition of the expression 'landowner', but section 7-A(1)(b) refers to a landowner who owns thirty standard acres or less, which, according to the learned Financial Commissioner, clearly means that here the landowner is referred to only in relation to land owned by him in the measure of thirty standard acres or less and not including any land with him as mortgagee. He found that both on the date of the coming into

force of Pepsu Act 8 of 1953 and the date of respondents 2 to 4's application under section 7-A of Pepsu Act 13 of 1955 the land in the ownership of those respondents was less than thirty standard acres. though, if the land under mortgage with them was added, the holding with them, in each case, would come to more than thirty standard acres, but he pointed out that in this matter the land under mortgage was not to be taken into consideration because the expression used in section 7-A(1)(b) is 'the landowner owns', which obviously would exclude the land under mortgage with such a person. The learned Financial Commissioner was further of the opinion that the position that was to be taken for the matter of the ground of termination of the tenancy with the appellants under section 7-A of Pepsu Act 13 of 1955 has to be considered on the date of an application in this respect under that provision, which in this case is January 6, 1961. He then pointed out that on that date also the position remained the same that the land in the ownership of respondents 2 to 4 was less than thirty standard acres ,though, adding to the same land under mortgage with them, each one held more than thirty standard acres, the permissible limit. So the learned Financial Commissioner accepted the revision application of those respondents and ordered termination of the tenancy in favour of the appellants and their ejectment from the land in question. It was from the order of the learned Financial Commissioner that the appellants made a petition under Articles 226 and 227 of the Constitution to this Court.

(7) It is somewhat unfortunate that detailed facts are not clearly available from the orders of the revenue authorities and not even from the petition of the appellants. The position is the same so far as the return of the petition of the appellants is concerned. It appears that before the learned Single Judge the position that the parties took was that respondents 2 to 4 have had both on the date of the enforcement of the President's Act (Pepsu Act 8 of 1953) on November 18, 1953, and on the date of the application of respondents 2 to 4 under section 7-A of Pepsu Act 13 of 1955, which was made on January 6, 1961, the land owned by those respondents less than thirty standard acres and when to that was added the area of the land of which those respondents have been the mortgagees, in the case of each respondent the holding exceeded thirty standard acres, the permissible area. However, the learned Judge agreed with the approach of the learned Financial Commissioner to section 7-A(1) (b) that it refers to 'the landowner' who owns thirty standard acres

or less, thus excluding the land under mortgage with him. The learned Judge, however, points out that although in the definition of the expression 'landowner' in section 2(f) of Pepsu Act 13 of 1955, this expression includes mortgaged land in the possession of the mortgagee, but that is 'unless the context otherwise requires', and the context of clause (b) of sub-section (1) of section 7-A, according to the learned Judge, clearly refers to only 'the landowner owns thirty standard acres or less', thus patently excluding the land under mortgage with such landowner. So the learned Judge dismissed the petition of the appellants by his judgment and order of May 18, 1967. This is an appeal under clause 10 of the Letters Patent by the appellants from the judgment and order of the learned Judge.

(8) It has already been stated that respondents 2 to 4 did not make any reservation of land for self-cultivation according to sections 5, 5-A and 6 of Pepsu Act 13 of 1955; so clause (a) of sub-section (1) of section 7-A has no application. Under clause (b) a tenancy can be terminated on the ground that "the landowner owns thirty standard acres or less of land and the land falls within his permissible limit", and this apparently provides two conditions (a) that the landowner owns thirty standard acres or less of land, and (b) that the land falls within his permissible limit, obviously meaning permissible limit of thirty standard acres. Both the learned Financial Commissioner and the learned Single Judge have proceeded on the first part of clause (b) of sub-section (1) of section 7-A, and to this extent their approach is correct, for the context of this clause shows that the use of the expression 'landowner' has been made only in connection with the land up to thirty standard acres or less owned by such a person. So the context of first part of clause (b) limits the meaning and scope of this expression 'landowner' to a person owning thirty standard acres or less. This, however, leaves out of the consideration the second part of this clause which refers to 'the land falls within his permissible area'. Obviously the words 'the land' in the second part of that clause refer to the land of the tenancy of which termination is sought. The learned counsel for respondents 2 to 4 has, however, contended that the words 'the land' in this part of clause (b) of sub-section (1) of section 7-A refer to thirty standard acres or less area as referred to in the earlier part of this clause, but, if this was so, it was not necessary to emphasise this additional requirement in this clause

in this manner, and the object would have been clearly met by completely eliminating the words 'and the land falls' from this clause. It is apparent that the words 'the land' in second part of clause (b) refer to the land, the termination of the tenancy of which is sought under the provisions of section 7-A. The meaning given to the expression 'landowner' in the context of this clause by the learned Judge is also consistent with this approach, because while in the context in which that expression appears in clause (b), the landowner may own thirty standard acres or less and then his holding may be beyond the permissible limit of thirty standard acres, because he has in his possession land mortgaged with him. So for a landowner to obtain benefit of clause (b) of sub-section (1) of section 7-A, he must satisfy both parts of that clause. The conclusion of the learned Financial Commissioner, endorsed by the learned Single Judge, is that the first part of clause (b) has been satisfied by respondents 2 to 4, and this is not really a matter of controversy between the parties in this appeal. The only emphasis on the side of the appellants has been that the land mortgaged with respondents 2 to 4 should be considered in relation to the first part of that clause, but that cannot be in view of the word 'owns' used in that part of the clause.

(9) It has then been urged by the learned counsel for the appellants that even if the approach is as above that a landowner has to satisfy both the parts of clause (b) of sub-section (1) of section 7-A, it was the stand of the parties before the learned Single Judge, that throughout respondents 2 to 4 have had more land than their permissible limit when their holding is taken to be ownership land as also the land mortgaged with them. His contention thus is that even the second part of clause (b) goes against respondents 2 to 4 according to the stand of the parties before the learned Single Judge. He points out that the learned Financial Commissioner has given direction in his order that termination of the tenancy of the appellants will take place subject to sub-sections (2) and (3) of section 7-A of Pepsu Act 13 of 1955 and, in any case, the appellants are entitled to the benefit of those provisions. The reply to these contentions on the side of the appellants by the learned counsel for respondents 2 to 4 is that even before the revenue authorities the appellants were claiming five standard acres to be left with them out of the tenancy with them according to the proviso to sub-section (1) of section 7-A and never laid

claim under sub-sections (2) and (3) of that section. For this last-mentioned claim they had to establish existence of twelve years' continuous tenancy of the land with them prior to the commencement of the President's Act (Pepsu Act 8 of 1953), which means prior to November 18, 1953, but in the statement by them in their petition they made no more than nine years of tenancy prior to that date. The learned counsel has then referred to paragraph 7(iv) of the appellants' petition in which they said that the tenants are not liable to be ejected unless they are accommodated on five standard acres of land each, and to this, the learned counsel for the appellants has reacted by pointing out the earlier statement in the petition by the appellants that respondents 2 to 4 were having their holding beyond the permissible limit.

(10) Now, for consideration of the arguments on behalf of the parties as above, it is necessary to decide whether the ground of eviction as in section 7-A(1)(b) has reference to the permissible limit as on October 30, 1956, the date of the enforcement of Pepsu Act 15 of 1956, or January 6, 1961, the date on which respondents 2 to 4 made application under section 7-A of Pepsu Act 13 of 1955 seeking termination of the tenancy with the appellants. The learned Financial Commissioner was apparently right when he expressed the opinion that the last is the date that has to be considered for the matter of looking at the permissible limit of holding of a landowner in a case like the present. The reason is obvious, and it is this, that it is the availability of the ground under section 7-A of that Act on the date on which application under that section is made that has to be considered. The application would be competent and good if on the date on which it is made, the ground is available to a landowner. It is conceivable that although a landowner may have had more area of land with him than his permissible limit earlier, but by the time he came to make application under section 7-A for the termination of the tenancy of a tenant under him, he might have lost much of that area either by redemption of mortgaged area or by other transfers permissible according to law, and on the date of such application the land in his possession was within the permissible limit. So the availability of the ground for termination of tenancy under section 7-A is to be seen on the date of the application under that provision. In the present case respondents 2 to 4 made application on January 6, 1961, and it is on that date that it is to be seen whether, for the purposes of second

part of clause (b) of sub-section (1) of section 7-A, the land of which respondants 2 to 4 seek termination of the tenancy was or was not within their permissible limit. There is a conflicting stand on this by the appellants in their petition. There was no clear stand of the parties on this before the revenue authorities, because not until the controversy reached the Financial Commissioner, did any revenue authority below consider that the relevant date for the purposes of second part of clause (b) of sub-section (1) of section 7-A was the date of the application of respondents 2 to 4 and not any earlier date. Even before the learned Financial Commissioner the matter was not clarified. As stated, in their petition the appellants took a conflicting stand and in the return the respondents did not clarify this matter either. It appears that even in spite of absence of clarity of facts, the parties proceeded to arguments before the learned Single Judge thinking that even on January 6, 1961, the holding of respondents 2 to 4 made up of the land owned by them and the land under mortgage with them, in each case was more than thirty standard acres. But this is proceeding without any material and thus would lead to injustice when this is a matter upon which the revenue authorities must necessarily have uncontrovertible material from their revenue records. It will be highly unjust to decide this matter in this appeal in the absence of material as to what was the exact position of the holding of respondents 2 to 4 on January 6, 1961, when (a) this matter has never been really understood and properly thrashed out before the revenue authorities, (b) it has not been at all clarified in the pleadings of the parties, and (c) it was not a matter of real controversy before the learned Single Judge.

(11) The conclusion then is (a) that respondents 2 to 4 can only succeed in their application under section 7-A for termination of the tenancy with the appellants of the land in question, if they satisfy both the conditions in clause (b) of sub-section (1) of section 7-A, (b), that respondents 2 to 4 have been held to satisfy the first condition in that clause by the learned Single Judge, affirming the approach of the learned Financial Commissioner, and this has been found to be the right and the correct approach, and (c) that so far as second condition of clause (b) of sub-section (1) of section 7-A is concerned, the appellants have been taking inconsistent stand with regard to the same and there is not enough

material for this Court to give a just decision, so that for the purposes of the decision of this question alone the matter will have o be gone into by the revenue authorities below. In other words, if the finding of fact is that respondents 2 to 4 had a holding in excess of the permissible limit on January 6, 1961, which holding may be made up of land owned by them and land under mortgage with them, leaving out of course the land already redeemed by that date, then alone will they not be satisfying second part of c use (b) of sub-section (1) of section 7-A, and will fail in their application, but if they establish as a fact that on that date their holding was within the permissible limit of thirty standard acres, made up whether of ownership land alone, or of mortgaged land alone, or of both, then they will succeed in their application. This is the only finding of fact which had to be given by the revenue authorities. The case will be remitted to the learned Financial Commissioner to give a direction to the authorities below to give a finding on this question of fact and then dispose of the application under section 7-A of respondents 2 to 4 in accordance with law.

(12) Consequently, the order of the learned Financial Commissioner and apparently that of the learned Single Judge also are modified to the extent indicated above and with the modification, as stated, the appeal of the appellants only succeeds partly and is otherwise dismissed, but there is no order in regard to costs.

B. R. Tuli, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

RAM SARUP ETC.,—*Appellants*

versus

PURAN ETC.,—*Respondents.*

R. S. A. No. 117 of 1960.

April 30, 1970.

Code of Civil Procedure (Act V of 1908)—Order 21 Rule 35(2)—Decree for possession becoming inexecutable by lapse of time—Such decree—Whether obliterated—Obtaining of possession by the decree-holder out of Court