absence of the other party. On the other hand, his Lordship adopted the course of having a witness examined on open commission, and directed that an open commission shall be issued notwithstanding the fact that previously the witness had been examined on interrogatories. In these circumstances, I am of the opinion that the impugned order of the trial Court directing the deletion of the note "other questions at the spot" cannot be considered to be without jurisdiction or incorrect. If the petitioner is not acting *mala fide* with a view to prolong the proceedings, as complained by the respondents' learned counsel, Mr. H. L. Sarin, he can ask for an open commission instead of putting in interrogatories for the examination of his witness, and even at this late stage, I am prepared to accede to that request. I, accordingly, direct the trial Court to issue an open commission for the examination of the petitioner's witness Faqir Chand if he makes a written application to that effect by 14th April, 1969, and deposits the necessary expenses as determined by the Court for issue of that commission together with Rs. 200 as costs of the plaintiff-respondent in proceeding to Indore and engaging a counsel for that purpose. If the application is not made, or the expenses of the commission and of the opposite party indicated above are not deposited within the time allowed, the trial Court should without delay proceed to implement its earlier order for the examination of Faqir Chand on interrogatories.

(6) In case the plaintiff's suit fails, Rs. 200 which the petitioner has now been asked to deposit on account of the expenses of the plaintiff's going to and engaging a counsel at Indore, will be included in the costs of the suit assessed for the defendant-respondent. The parties are directed to appear in the trial Court on 11th April, 1969.

(7) If interrogatories are to be issued, the petitioner will be given an opportunity by the trial Court to put in interrogatories by way of re-examination as well.

K. S. K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and R. S. Sarkaria, J.

GIANI AND ANOTHER,—*Appellants.*

versus

FINANCIAL COMMISSIONER, PUNJAB, CHANDIGARH (REVENUE) AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 280 of 1966

March 20, 1969.

Punjab Security of Land Tenures Act (*X of* 1953)—*Section* 18—*Term 'tenant' in section* 18(1)(i)—*Whether to be interpreted as defined in section* 4(5)

of Punjab Tenancy Act, 1887—*Words "who has been in....occupation"—Meaning and significance of—Tenant instituting application under section* 18(1)(i)—*After the institution and before making payment of the purchase price, tenant ceases to be a tenant—Such tenant—Whether loses right to purchase the land.*

Held, that a plain reading of section 18 of Punjab Security of Land Tenures Act unmistakably shows that one of the basic qualifications *entitling* a person to make an application under clause (i) or clause (ii) of section 18(1) is that he must be a 'tenant' at the time he seeks to purchase the land which, again, must be comprised in his 'tenancy'. The aforesaid clause(ii) of Section 18(1), however, envisages the case of a *tenant* who had been ejected but had been *restored* to his tenancy. But in his case, also, at the time of making the purchase, he must have the status of a 'tenant'.. Clause (iii) of the same sub-section, however, as is clear from its context, envisages the case of an ex-tenant, i.e., a tenant who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of the Act. Properly scanned, the section reveals that whereas there is repugnancy in the subject or context of clause (iii) of Section 18(1), justifying inclusion of ex-tenants within its scope, there is no such repugnancy, whatever, in the theme or context of clause (i). Rather, the language and contexture of this clause(i) indicate that in relation to that clause the term 'tenant' has to be interpreted as defined in Section 4(5) of Punjab Tenancy Act, 1887. (Para 9)

Held that the words 'who has been in....occupation' have been advisedly used in the perfect *present* tense in clause (i) of Section 18(1) of the Act. They denote that the tenancy or the occupation of the applicant as a tenant should be subsisting all along, right up to the purchase. They clearly show that if the tenant ceases to be a tenant in continuous occupation of the land comprised in his tenancy, he loses the right to purchase. It is significant that these words "who has been in ...occupation" occurring in clauses(i) and (ii) have not been repeated in clause(iii) for the reason that the latter clause relates to ex-tenants. This construction is further fortified by the subsequent part of this section which indicates the time within which the tenant can make an application for purchase. In the case of the *tenants* falling within clauses (i) and (ii), the tenant can make an application "at any time", while in the case of an *ex-tenant* falling within clause (iii) of the same sub-section he can exercise his right of purchase "within a period of one year from the date of the commencement of this Act." The words "at any time" obviously have to be read along with the words "a tenant....who has been in continuous occupation" mentioned in clauses (i) and (ii). The fixation of a period of limitation in the case of *ex-tenants* under clause (iii), and no such period in the case of *tenants* coming under clauses (i) and (ii), unmistakably reveals that the dominant intention of the legislature was that the right to purchase, as a rule, be given only to those *tenants* who continue to be in occupation, as such, of the land comprised in their tenancy, right up to the time of the

very purchase. Exception was provided in clause (iii) to that general rule for a specific category of ejected 'tenants'. Hence the necessity of period of limitation in their case. (Para 10)

Held, that if at any time after the institution of the application under section 18(1)(i) of the Act and before making the payment or deposit of the price of the land or its first instalment, the tenant applicant ceases to be a tenant by reason of an order of ejectment having been passed against him by a competent authority or by operation of law or of his own volition, he loses his right to purchase the land which was comprised in his erstwhile tenancy. (Para 28)

Letters Patent Appeal under Clause X of the Letters Patent of the Punjab High Court against the order of the Hon'ble Mr. Justice Shamsher Bahadur dated the 20th May, 1966 passed in Civil Writ No. 2184 of 1964.

G. P. JAIN, ADVOCATE, (on 6-2-69) AND G. C. GARG AND S. P. JAIN, ADVOCATES *for the Appellants.*

H. L. SARIN, H. S. AWASTHY AND A. L. BEHL, ADVOCATES, *for the Respondents.*

JUDGMENT

SARKARIA, J.—The circumstances giving rise to this appeal under clause 10 of the Letters Patent against an order, dated May 20, 1966, of a learned Single Judge of this Court, are as follows:

(2) Giani and Piara appellants, sons of Shri Mathra of village Bayyanpur, Tehsil Sonepat, are big landlords. They had purchased some agricultural land from Pirthi and Shrimati Lali, Respondents 5 and 6, respectively. The land was in the occupation of the tenants, Chandgi Ram, Dhara Singh and Munshi, Respondents 2 to 4. The aforesaid tenants made an application on January 7, 1957, under section 18 of the Punjab Security of Land Tenures Act, (hereinafter called the Act), for purchasing the land measuring 5 *acres*, 3 *kanals* and 7 *marlas* comprised in their tenancy before the Assistant Collector First Grade who dismissed it on August 28, 1958. On appeal by the tenants, the Collector decided on September 19, 1958, that the said tenants were entitled to purchase 324/551 share of the land in dispute. He, therefore, reversed the order of the Assistant Collector and remanded the case to the Assistant Collector with the direction that he should determine the shares which the tenants would be entitled to purchase, and work out the other details. The landlords approached the Financial Commissioner who, by an order of July 8, 1960, affirmed the order, dated September 19, 1968, of the Collector

and sent the case back to the Assistant Collector for determining 'as to which landlord will have to part with how much land and in favour of which tenant'. He added that all this will have to be gone into in detail by the Assistant Collector to whom the case had been remanded after he had heard each party with regard to his exact share. After the remand, while the proceedings continued to linger and drift, the landlords made an application under section 9(1)(ii) of the Act on the ground that the tenants had failed to pay the rent regularly without sufficient cause. Thus, while the proceedings in the application under section 18 of the Act had not been finally decided and were still pending, the Assistant Collector, First Grade on May 31, 1962, accepted the landlords' application under section 9 and passed an order of ejectment, the material part of which, reads as follows:—

> "It is, therefore, quite evident that the respondents had been defaulters in payment of rent regularly and are liable to be ejected. I, therefore, order......... that they be ejected from the land in dispute from 1st May to 15th June, 1962. The learned Financial Commissioner has allowed to purchase a portion of the land in dispute. That right, has, therefore, been conferred by the learned Financial Commissioner on the respondents and I order that by this ejectment, they shall not forego that right. As and when the question of purchase is finally decided, they will be allowed to purchase the land of their share."

(3) The landlords then made an application to the Assistant Collector, First Grade requesting for dismissal of the tenants' petition under section 18 on the ground that his order, dated May 31, 1962, of ejectment of the tenants had put an end to the relationship of landlord and tenant between the parties. The Assistant Collector dismissed that application by an order of July 18, 1963. The landlords went in appeal to the Collector where, also they raised the contention that because of the order of ejectment, the relationship of landlord and tenant between the parties had come to an end, and, in consequence, the tenants' application under section 18 was no longer maintainable. The Collector, however, did not accept this contention and dismissed the appeal with the observation—

> "......That dropping of those proceedings would be quite unjust because this would deprive the tenants of a right which had been upheld even by the highest court and which right they were not able to enjoy because of the

protracted proceedings before the Assistant Collector, First Grade. It would be most inequitous if the tenants are deprived of this right simply because the court was not able to take quick decision. I think this point was in the mind of the A.C.I.G., who dealt with the ejectment proceedings and that is why he qualified the ejectment order by saying that the right of purchase of land granted by all the courts up to the court of the Financial Commissioner, will remain intact."

Against that order of the Collector, the landlords went in revision to the Commissioner who dismissed it with the observation that—

"......Quite obviously, the qualifying conditions of section 18 operate at the time an application is made by the tenants. The argument that the relationship of a tenant and landlord must subsist between the parties under all circumstances at the time the actual purchase takes place, is not supported by a reading of the section itself. The provisions of this section are very wide. The right of purchase has been made available even to ex-tenants ......In this particular case, the position is that the right of purchase........already accrued to the respondents by virtue of the order of the learned Financial Commissioner himself——and it so happens that this right accrued at a time when the respondents were in possession of their tenancy."

(4) The landlords approached the Financial Commissioner, in revision, who also, by his order dated May 20, 1964, upheld the order of the Assistant Collector. He also took the view that the tenants' right of purchase had not been affected by the subsequent order of ejectment. The landlords moved the High Court under Article 226 of the Constitution of India praying for an appropriate writ, order or direction quashing the aforesaid order of May 20, 1964, of the Financial Commissioner.

(5) The order, dated May 20, 1966, of the learned Single Judge, by which he dismissed the writ petition and which is the subject of this appeal, proceeds on three-pronged reasoning:—

(a) That the respondents having been in continuous possession of the land comprised in the tenancy for a minimum

period of six years, were entitled to ask for the purchase. Even if an effective order of ejectment against the tenants had been passed, their right to purchase, which had been affirmed by the Financial Commissioner per his order dated May 20, 1964, could not be said to have been abrogated. At best, it came to a temporary cessation. The condition which was attached by the Assistant Collector, is perfectly valid and has to be given full meaning and content.

(b) That the true purpose of the Act would be served if the word 'tenant' occurring in Section 18 of the Act is held to include an 'ex-tenant' and since the respondents had once been tenants, they were to be treated as 'tenants' for the purpose of Section 18 of the Act.

(c) That the revenue authorities had taken a view which was reasonable and just and the error which is said to have been committed by them in making the impugned order, is far from self-evident, and, consequently in view of the dictum of the Supreme Court in *Satyanarayan* v. *Mallikarjun* (1), such an error cannot be cured by a writ of certiorari.

(6) Before dealing with the points canvassed before us, it will be proper to notice here the material provisions of the Act and the Punjab Tenancy Act, 1887.

Section 18 of the Act is in these terms:—

"18. *Rights of certain tenants to purchase land*—

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

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years; or

(ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous

(1) A.I.R. 1960 S.C. 137.

occupation of the land comprised in his tenancy immediately before ejectment and immediately after restoration of his tenancy together amounts to six years or more; or

(iii) who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of this Act and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejectment,

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

Provided that no tenant referred to in this sub-section shall be entitled to exercise any such right in respect of the land or any portion, thereof if he had sublet the land or the portion, as the case may be, to any other person during any period of his continuous occupation unless during that period the tenant was suffering from a legal disability or physical infirmity, or, if a woman, was a widow or was unmarried:

Provided further that if the land intended to be purchased is held by another tenant who is entitled to pre-empt the sale under the next preceding section, and who is not accepted by the purchasing tenant, the tenant in actual occupation shall have the right to pre-empt the sale.

(2) A tenant desirous of purchasing land under sub-section (1) shall make an application in writing to an Assistant Collector of the First Grade having jurisdiction over the land concerned and the Assistant Collector, after giving notice to the land-owner and to all other persons interested in the land and after making such inquiry as he thinks fit, shall determine the value of the land which shall be the average of the prices obtaining for similar land in the locality during 10 years immediately preceding the date on which the application is made.

(3) The purchase price shall be three-fourth of the value of land as so determined.

(4) (a) The tenant shall, be competent to pay the purchase price either in a lump-sum or in six-monthly instalments not exceeding ten in the manner prescribed.

(b) On the purchase price or the first instalment thereof, as the case may be, being deposited, the tenant shall be deemed to have become the owner of the land, and the Assistant Collector shall, where the tenant is not already in possession, and subject to the provisions of the Punjab Tenancy Act (XVI of 1887), put him in possession thereof.

(c) If a default is committed in the payment of any of the instalments, the entire outstanding balance shall, on application by the person entitled to receive it, be recoverable as arrears of land revenue.

(5) * * * * * * *.

(6) * * * * * * *.

(7) * * * * * * *.

Section 2 (6) of the Act, which defines 'tenant' reads as follows: —

"2. *Definition.*—In this Act, unless the context otherwise requires: —

(1) * * * * * * *.

(2) * * * * * * *.

(3) * * * * * * *.

(4) * * * * * * *.

(5) * * * * * * *.

(6) 'Tenant' has the meaning assigned to it in the Punjab Tenancy Act, 1887 (Act XVI of 1887), and includes a sub-tenant and self-cultivating lessee, but shall not include a present holder, as defined in section 2 of the Resettlement Act."

Section 4(5) of the Punjab Tenancy Act, 1887, contains the following definition of tenant' :—

"4. *Definitions.*—In this Act, unless there is something repugnant in the subject or context,—

(1) * * * * * * *.

(2) * * * * * * *.

(3) * * * * * * *.

(4) * * * * * * *.

(5) 'tenant' means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person; but it does not include—

(a) an inferior landowner;

(b) a mortgage of the rights of landowner; or

(c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, 1887 (XVII of 1887), for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear; or

(d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it."

(7) Learned counsel for the appellants has assailed all the three reasons advanced by the learned Single Judge in dismissing their petition. It is contended that one of the essential conditions for the maintainability of an application under section 18(1)(i) of the Act, is, that the applicant should be a '*tenant*' of the landowner with regard to the land he seeks to purchase, not only at the date of making the application but also right up to the deposit of the purchase price or the first instalment thereof under sub-section (4) (b) of Section 18 of the Act, and, if at any time before the making of such deposit he ceases to be a 'tenant', he loses his right to purchase the land. In the present case, the argument proceeds, the respondents had ceased to be tenants as soon as the order of ejectment was passed on the ap-

plication of the landlords under Section 9(1) (ii) of the Act on May 31, 1962, and thus lost the basic qualification for purchasing the land. It is emphasised that the Collector's order, dated September 19, 1958, by which he found the tenants to be entitled to purchase 324/551 share, but remanded the case to the Assistant Collector for working out the details, did not *ipso facto* create any right, interest, or title to the land in their favour, and that, consequently, it could not be said that the ejectment order had been made after the adjudication of the respondents application under Section 18 of the Act.

(8) In support of his contention, the learned counsel has relied on a Single Bench judgment of this Court (by Narula, J.), in *Amin Lal and others* v. *A. L. Fletcher and others* (2), and has also referred to *Umrao* v. *Nemi and others* (3), *Banarsi Dass* v. *Devi Dayal and others* (4), *Har Sarup and another* v. *The Financial Commissioner, Revenue, Punjab and others* (5), *Malik Lah Labhu Masih* v. *Financial Commissioner, Punjab and another* (6), *Hans Raj* v. *Brahmi Devi* (7), and also to Rule 23 of the Punjab Security of Land Tenures Rules, 1956.

(9) A plain reading of Section 18 of the Act unmistakably shows that one of the basic qualifications *entitling* a person to make an application under clause (i) or clause (ii) of Section 18(1) is that he must be a 'tenant' at the time he seeks to purchase the land which, again, must be comprised in his 'tenancy'. The aforesaid clause (ii) of Section 18(1), however, envisages the case of a *tenant* who had been ejected but had been *restored* to his tenancy. But in his case, also, at the time of making the purchase, he must have the status of a 'tenant'. Clause (iii) of the same sub-section, however, as is clear from its context, envisages the case of an ex-tenant, i.e., a tenant who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of this Act. In the instant case, the tenant has made an application under Section 18(1) (i) of the Act. We are, therefore, concerned only with the limited question, whether the meaning of the term 'tenant' given in clause (i) of Section 18(1) of the Act should be confined to the definition of the term given in Section 4(5) of the Punjab Tenancy Act, 1887, read with Section 2(6) of the Act. This question further resolves itself into the issue: Is there anything repugnant in the subject or context of

(2) 1968 P.L.R. 118.
(3) 1967 P.L.R. 887.
(4) 1967 P.L.R. 417.
(5) 1965 L.L.T. 157.
(6) A.I.R. 1967 Ph. 449.
(7) 1960 P.L.J. 38.

Section 18(1) (i), which justifies a departure from or extension of the definition of 'tenant', so as to embrace within its scope an ex-tenant also? It appears to me that the answer to this question must be in the negative. For determining whether or not there is any such repugnancy, we are primarily concerned with the 'subject or context' of sub-section (1) (i) of Section 18. It will, therefore, be futile, if not imprudent, to run after the vague and elusive thing—the general spirit of the enactment as a whole, and be lost in the attempt. In the dictionary sense the words 'subject or context' mean "topic or intimately associated discourse". The field of enquiry, therefore, need not extend beyond Section 18. Mainly, it will centre round, if not limited to, clause (i) of sub-section (1) and those parts of Section 18, interwoven with it as one contexture, which are sufficient to throw light upon the meaning of the terms 'tenant' and 'tenancy' as used in or in relation to the aforesaid clause (i). Thus scanned, Section 18 reveals that whereas there is repugnancy in the subject or context of clause (iii) of Section 18(1), justifying inclusion of ex-tenants within its scope, there is no such repugnancy whatever, in the theme or context of clause (i). Rather, the language and contexture of this clause (i) indicate that in relation to that clause the term "tenant' has to be interpreted as defined in Section 4(5) of the Tenancy Act.

(10) In this connection, I may firstly refer to the words 'who has been in.....occupation' occurring in the aforesaid clause. These words in the perfect *present* tense appear to me to have been advisedly used. They denote that the tenancy or the occupation of the applicant as a tenant should be subsisting all along, right up to the purchase. They clearly show that if the tenant ceases to be a tenant in continuous occupation of the land comprised in his tenancy, he loses the right to purchase. It is significant that these words "who has been in....occupation" occurring in clauses (i) and (ii) have not been repeated in clause (iii) for the reason that the latter clause relates to ex-tenants. This construction is further fortified by the subsequent part of this section which indicates the time within which the tenant can make an application for purchase. In the case of the *tenants* falling within clauses (i) and (ii), the tenant can make an application "at any time", while in the case of an *ex-tenant* falling within clause (iii) of the same sub-section he can exercise his right of purchase "within a period of one year from the date of the commencement of this Act." The words "at any time" obviously have to be read along with the words "a tenant....who has been in continuous occupation" mentioned in clauses (i) and (ii). The fixation of a period of limitation in the case of *ex-tenants* under clause (iii),

and no such period in the case of *tenants* coming under clauses (i) and (ii), unmistakably reveals that the dominant intention of the legislature was that the right to purchase, as a rule, be given only to those *tenants* who continue to be in occupation, as such, of the land comprised in their tenancy, right up to the time of the very purchase. Exception was provided in clause (iii) to that general rule for a specific category of ejected 'tenants'. Hence the necessity of period of limitation in their case.

(11) It is now proposed to notice the cases cited at the bar. The first of these is *Har Sarup's case* (3), decided by D. K. Mahajan, J. In that case, on January 13, 1959, the landlords made an application for eviction of the tenants under Section 14-A of the Act on the ground that they had failed to pay regularly the rent due. On July 16, 1959, the tenants made an application under Section 18(1) (i) of the Act for purchase of the land on the ground that they had been tenants in continuous occupation for more than six years. Both these applications were decided by the Assistant Collector by an order, dated March 16, 1962, holding that the tenants were not qualified to purchase, because they were not tenants for a continuous period of six years before the application. With regard to the ejectment matter, he found that the tenants had committed defaults in payment of rent and ordered their eviction. The net result was that the landlord's petition was allowed and the tenants' application was dismissed. Against this decision, the tenants preferred two appeals to the Collector, who while upholding the finding of the Assistant Collector that the tenants were liable to eviction, held that the tenants were entitled to purchase 62 *kanals* and 10 *Marlas*, having remained in its continuous occupation for a period of over six years. He thus modified the ejectment order and ruled that from 62 *kanals* and 10 *marlas*, the petitioners would not be ejected. Against that decision, the landlords appealed to othe Commissioner, while the tenants filed revision-petition. The tenants' revision-petition was dismissed, while the landlords' appeal was allowed. The Financial Commissioner held that in view of the acceptance of the landlords' application for ejectment, subsequent application under Section 18 could not be considered, and that since the tenants were being evicted there would be no question of their getting the land by purchase under Section 18. Against that order of the Financial Commissioner, a writ petition under Articles 226 and 227 of the Constitution was instituted. D. K. Mahajan, J., invited the decision of the Financial Commissioner as to the question, where the tenants should be allowed to purchase the land measuring 62 *kanals* and 10

marlas. The Financial Coommissioner submitted his report that the tenants were in possession of the aforesaid area for a continuous period of more than 6 years, and as such, were entitled to purchase it. Thereupon, the learned trial Judge directed the tenant-writ petitioners to deposit the arrears of rent in Court within three months from the date of this order.

(12) It was argued on behalf of the landlords that since the eviction application was filed on January 13, 1959, earlier than the application under Section 18 (1) made by the tenants on July 16, 1959, and the tenants being in arrears of rent had incurred liability to ejectment, their application under Section 18 was no longer maintainable. This contention was repelled with these observations:—

> "......at the time when section 18 application was filed, no order for eviction had been passed. Therefore, at that time, the relationship of landlord and tenant did exist. Mr. Daulta has not been able to point to me any provision of law which would make the eviction decree operative from the date of eviction application. The mere fact that the tenants had incurred the liability for eviction by reason of non-payment of rent would not put an end to the admitted relationship of landlords and tenant between the parties. This liability only puts an end to the aforesaid relationship when the eviction decree was passed. The eviction was passed long after the Section 18 application. Therefore, the present petition is liable to succeed only to the extent of Section 18 application....".

(13) It may be noted that while it was accepted that in order to have the necessary *locus standi* to apply under Section 18 (1) (i) of the Act, a person must have the status of a tenant at the date of the application, no reason has been given why it is not necessary for him to retain that qualification right up to the time when he makes the purchase by depositing the price or its first instalment under sub-section (4).

(14) The next case that may be noticed is *Umrao's case* (3), decided by P. C. Pandit, J. The material part of head-note (i) reads as follows:—

> "The relationship of landlord and tenant comes to an end when a decree for ejectment is passed against the tenant;

it is not necessary that the decree should have been actually executed and the tenant dispossessed from the said land. Where an order for ejectment of the tenant is made before an application under Section 18 of the Punjab Security of Land Tenures Act is made by the tenant, there being no relationship of landlord and tenant on the date of application, the application is liable to be rejected."

(15) The dictum of D. K. Mahajan, J. in *Har Sarup's case ibid* (5), was followed.

(16- In *Malik Labhu Masih's case* (6), the tenant made an application under section 18(1) (i) of the Act on February 26, 1961. Before this application could be allowed, the landlord made an application for ejectment of the tenant and obtained a decree on June 26, 1961. In that writ-petition on by the tenant, the respondent (Financial Commissioner) did not put in any return. Shamsher Bahadur, J., allowed the petition with these observations:—

"It may be mentioned that the application for purchase was made actually on 26th of February, 1961, before the ejectment order was passed. All that is necessary to determine is too see whether the applicant-tenant, on the date of his application for purchase under Section 18 (1) (i) had been in continuous occupation for a minimum period of six years. It may be that proceedings for ejectment may have been taken before or after this application. If there is no ejectment order when the application was made, it means that the right of the applicant to purchase the land under Section 18 (1) (i) subsists.

The tenant's right to purchase under Section 18 (1) (i) is independent of the landlord's right to eject a tenant under Section 9. It may be that a tenant is liable to ejectment under Section 9 for being in arrears of rent, but so long as he is the tenant on the land his right to purchase cannot be denied or defeated."

(17) In support of the above observations, reliance was placed on the Single Bench judgment in *Har Sarup's case ibid.* (5).

(18) The decision of another learned Judge (R. S. Narula, J.), in *Amin Lal's case* (2), appears to lay down a different rule. There,

the tenant had made his application under Section 18(1) (i) of the Act on May 14, 1962, while the landowner had made an application under Section 14-A (i) read with Section 9 (1) (ii) for ejectment of the tenant on June 6, 1961, on the ground that the tenant had failed to pay the rent regularly without sufficient cause. The Assistant Collector dismissed both these applications on October 29, 1962, by two separate orders. The appeal of the landowner was accepted by the Collector by an order, dated August, 16, 1963, and a decree for ejectment was passed. By another order, dated September 6, 1963, the Collector allowed the tenant's application under Section 18 with regard to 28 Kanals. Both sides preferred second appeals against the order, dated September 6, 1963, of the Collector. The tenant also appealed against the order of his ejectment passed by the Collector. The Additional Commissioner upheld the Collector's order, dated August 16, 1963, and dismissed the tenant's appeal against the order of ejectment. By a separate order of January 22, 1964, he also dismissed the landowner's appeal against the Collector's order, dated September 6, 1963, on a technical ground. Similarly, the tenant's appeal against that order was also dismissed. Against the judgment, dated January 22, 1964, of the Additional Commissioner, two revision-petitions were filed by the tenant and a third by the landowner. The Financial Commissioner allowed the tenant's revision-petition number 623 against his ejectment and dismissed the landowner's application. The remaining two revision-petitions, one filed by the tenant and the other filed by the landowner against the order, dated January 22, 1964, of the Additional Commissioner were also rejected. Against the decisions of the Financial Commissioner in these three revision-petitions, three writ petitions under Articles 226/227 of the Constitution were filed in the High Court. One of the contentions advanced on behalf of the landowner, was, that after the termination of relationship of landlord and tenant by a valid and binding decree of the Revenue Court, the purchase proceedings by the tenant, if not already concluded, automatically abate and the statutory right of the tenant to purchase the tenancy premises in certain contingencies comes to an end as the remedy provided by Section 18 is available only to a person holding a subsisting tenancy and not to an erstwhile tenant. In order to succeed the argument proceeded, in an action under Section 18 of the Act, the claimant must not only be a tenant of the land in question, on the date of filing of his petition, but must also continue to remain a tenant of the land in question till the order for purchase is passed in his favour. It was added that, in fact, vested right accrues to the tenant only after he makes payment of the first instalment of the price fixed by an order under Section 18, and that in any event, if

the tenancy comes to an end either by volition of parties or by operation of law or by an order of a competent Court before even the Assistant Collector, First Grade has passed any final order in the tenant's petition under section 18, the remedy of the tenant available under that sections comes to an end.

(19) The learned Judge substantially accepted these contentions. After referring too *Har Sarup's case* (5), decided by Mahajan, J., and *Malik Lah Labhu Masih's case* (6), decided by Shamsher Bahadur, J., the learned Judge expressed as follows:—

> "*Prima facie* it appears that nothing turns merely on the application of the tenant or of the landlord being prior and that irrespective of who applies first, the rights of the parties may be affected by the earlier conclusion of one of the two proceedings. If the application of the tenant for purchase is granted before the order of eviction is passed, and the tenant makes payment of the first instalment, he ceases to be a tenant and no question of his eviction can arise. If on the other hand his tenancy is brought to an end by order of ejectment, his status as a tenant which is the very basis of an application under section 18 is lost, and he cannot then claim to purchase the land."

(20) A survey of the above cases reveals that there is unanimity on the point that *at the date of the application* under Section 18(1) (i), the applicant must have the subsisting qualifiation of being a tenant in respect of the land sought to be purchased. From that point onwards, there seems to be some divergence of opinion. The view of Mahajan, J., in *Har Sarup's case* (5), and of Shamsher Bahadur, J., in *Malik Labhu Masih's case* (6), tends to lay down that if at any time after the institution of the application under section 18(1) (i) the tenant, by reason of a decree for ejectment having been passed against him, ceases to be a tenant, his claim to purchase the land under Section 18(1)(i) of the Act is not defeated. On the other hand, the view taken by Narula, J., in *Amin-Lal's case* (2) is to the effect, that the applicant under Section 18(1) (i) must retain his basic qualification as a tenant right up to the time when his title to the land accrues by deposit of the first instalment of the price under Section 18(4) (b) of the Act. If at any time before making such a deposit the tenant ceases to be a tenant, his claim to purchase the land also falls to the ground.

(21) As observed already, in all the four cases namely, *Har Sarup's case* (5), *Umrao's case* (3) *Malik Labhu Masih's case* (6) and *Amin Lal's case* (2) the learned Judge, either expressly or by implication, accepted the proposition that only a tenant whose status is subsisting at the *date of the application* under Section 18(1) (i) of the Act is entitled to purchase if he has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years. In none of these cases has it been held that the word 'tenant' in Section 18(1) (i) is to be assigned a meaning different from or wider than that given in the definition of that term in Section 4(5) of the Punjab Tenancy Act and that is what flows from the plain language of Section 18. Once it is held that the status as 'tenant' is a pre-requisite of the applicant's right to purchase, there seems to be no escape from the conclusion that he must retain that qualification at the time of the actual purchase or acquisition of ownership rights by depositing the price or its instalment under sub-section (4) (b) of Section 18. Prior to that stage, the proceedings may be called pre-purchased proceedings of an exploratory or preliminary character. The first preliminary step is that the tenant makes an application to the Assistant Collector under Section 18(1) (i) for determination of his eligibility to purchase. The second step (which may be taken simultaneously with the first) is indicated by sub-section (2) when the tenant makes an application for determination of the value of the land in the prescribed manner. This stage also precedes the actual acquisition or purchase of the land. The order settling these preliminaries under sub-sections (1) (i), (2) and (3) of Section 18 will not, by itself, be a final order enforceable through execution. Even after such preliminary determination under sub-sections (1), (2) and (3), the tenant may change his mind. He may find that the value assessed is excessive and beyond his means, or may for any other reason, decide not to purchase but continue in occupation of the land as a tenant. It is really after the determination of the aforesaid preliminaries, viz., eligibility under sub-section (1) and price under sub-sections (2) and (3), that the tenant actually exercises his right of purchase by depositing or paying the price or its first instalment under sub-section (4) within the period prescribed by Rule 23(3) of the Punjab Security of Land Tenures Rules, 1956.

(22) Before proceeding further, it will not be out of place to mention here that in the later part of clause (b) of sub-section (4), which requires the Collector, if necessary, to put the 'tenant' in possession, the word 'tenant' has reference to 'ex-tenants' only as contemplated by clause (iii) of sub-section (1).

(23) Coming back to the point as to when the purchase is made, it may be noted that Rule 23 (3) lays down that the lump-sum or the first instalment of purchase price shall be deposited in a Government treasury or paid to the Assistant Collector within 15 days of his determining the value of the land. It is only on such payment or deposit that the purchase takes place and the status of the tenant is transformed into that of proprietor.

(24) With utmost respect, therefore, I think that it is not correct to say that it is not necessary for the tenant-applicant under Section 18 (1) (i) to retain his qualification as a tenant after the making of an application under Section 18 (1) (i). This view is founded on the fallacy that the mere fact of making an application under Section 18 (1) (i) by the tenant in continuous occupation for a minimum period of six years, immediately confers on him a vested right as purchaser of the land. Such an assumption, which is the basis of this view, is opposed to the express provisions of sub-section (4) (b) of Section 18, which are to the effect, that the tenant becomes the owner only on the deposit of the price or its instalment. It is further respectfully submitted that the said view might lead to anomalous and startling results. It will give the words "at any time" occuring in Section 18 (1) a meaning quite foreign to and divorced from its context, and entitle persons who ceased to be tenants years ago to purchase lands which were 'once-upon-a-time' comprised in their tenancy, without any limit as to time. It will also turn into a potent weapon of abuse in the hands of the tenants who may use this device for grabbing the lands comprised in their tenancy without payment of any compensation. This will be clear by taking a hypothetical illustration. Supposing X, a tenant, makes an application under Section 18 (1) (i) on January 1, 1960, and stops payment of further rent in respect of the land concerned to the landowner. The tenant causes or the proceedings otherwise continue to drag on for a period of five years. During this period the landowner, because of the persistent defaults of the tenant to pay rent, gets an order of ejectment against him. Despite execution of such an order, the tenant holds on to actual possession of the land, and, at the end of five years, say on January 1, 1965, all the preliminary proceedings under sub-sections (1), (2) and (3) conclude. Thereafter, the tenant exercises his right of purchase by depositing the first instalment under sub-section (4) of Section 18 read with Rule 23. He would thus become owner of the land, virtually by paying the same amount or even less which was otherwise due by him as rent to the landowner. The aforesaid view will thus put a premium on default,

delay and laxity on the part of tenants and allow them to take advantage of their own wrong.

(25) In the present case also, there is no equity in favour of the tenants who failed to pay the rent despite the passage of an order of ejectment against them. They did not come to the Collector with clean hands. The error of law being apparent in the impugned order, the rule laid down by the Supreme Court in *Satyanarayan* v. *Mallikarjun* (1), is not attracted.

(26) Thus, the third ground also of the judgment of the learned Single Judge does not, it is respectfully submitted, stand the test of close scrutiny.

(27) For reasons aforesaid, I am unable to persuade myself to conform to the view taken on the point in *Har Sarup's case ibid* (5) and *Malik Labhu Masih's case ibid* (6) and by the learned Single Judge in the instant case. I would prefer to adopt the view taken in *Amin Lal's case* (2), which, if I may say so with respect, lays down the law on the subject, correctly.

(28) I am thus firmly of the view that if at any time after the institution of the application under Section 18(1)(i) and before making the payment or deposit of the price or its first instalment under sub-section (4)(b) read with Rule 23, the tenant ceases to be a tenant by reason of an order of ejectment having been passed against him by a competent authority, or by operation of law or of his own volition, he loses his right to purchase the land which was comprised in his erstwhile tenancy.

(29) Correctness of the proposition that a mere passing of an order or decree of ejectment by a competent authority or a Court puts an end to the relationship of landlord and tenant, had not been seriously disputed before us. I, therefore, need not dilate on this point. Suffice it to say here that this principle is well settled. It has been accepted not only in all the Single Bench judgments of this Court, noticed above, but also in a Division Bench judgment of this Court in *Banarsi Dass v. Devi Dayal* (4), followed by Pandit, J., in *Umrao's case* (3). Further more, in the present case the order of ejectment was followed by delivery of some sort of possession, in execution, though the tenants maintained that it was a mere paper affair and they were never divested of actual possession.

(30) Applying the law, as viewed by me above, to the facts of the instant case, it may be noted that the application by the tenant under Section 18(1)(i) was made for the purchase of the share of the landowner-respondents in Killa No. 16 of Rectangle No. 15, Killa Nos. 2, 3, 4, 7 and 10 of Rectangle No. 23, Killa Nos. 12/2 and 22/1 of Rectangle No. 36, and Killa Nos. 20 and 24 of Rectangle No. 14, total area: 5 acres, 3 *kanals* and 7 *marlas*. The ejectment order, dated May 31, 1962, upheld on appeal on December 12, 1962, made on the landowners' application did not cover Killa No. 16 of Rectangle No. 15, and Killa Nos. 2 and 3 of Rectangle No. 23, though it covered the remaining fields mentioned in the tenants' application under Section 18 of the Act. That means that the tenant was never ejected from the aforesaid three Killas (16 of Rectangle 15, and 2 and 3 of Rectangle 23). With regard to these three fields, the tenants have retained their status as tenants throughout. But with regard to the rest of the land, the tenants, because of the decree of ejectment passed by the Assistant Collector, First Grade, had ceased to be tenants on May 31, 1962, and, as such, had lost the basic qualification to purchase that land.

(31) Further, with respect, I do not find myself in agreement with the learned Single Judge when he says that the order of ejectment passed against the tenants was not an "effective order" and that at best it caused a 'temporary cessation' of tenancy, It is not understood how the so-called condition attached by the Assistant Collector to the order of ejectment was 'perfectly valid'. From the material part of the Assistant Collector's order, dated May 31, 1962, quoted above, it is apparent that after directing that the tenants 'be ejected from the land in dispute from 1st May to 15th May, 1962', he further said that "by this ejectment they shall not forgo" their right to purchase the land, conferred by the Financial Commissioner.

(32) In the first place, even the order of the Financial Commissioner could not, as discussed already, confer on tenants any vested right or title in the land. It was a preliminary and not a fianl order. Even the price of the land had not been determined for which purpose he remanded the case to the Assistant Collector. The whole thing was in an inchoate and exploratory stage. Secondly, because of the order of ejectment, the tenants had lost their status as tenants, which was the basic qualification for purchasing the land. The so-called condition, therefore, imposed by the Assistant Collector was inoperative, ineffective and invalid.

(33) In the light of the above discussion, the appeal is allowed, the judgment of the learned Single Judge, dated May 20, 1966, is reversed, and the impugned orders, dated July 18, 1963, October 29, 1963, November 20, 1963, and May 20, 1964, of the Assistant Collector, Collector, Commissioner, and the Financial Commissioner, respectively, are quashed, excepting with regard to the right of respondents 2 to 4 to purchase Killa No. 16 of Rectangle No. 15 and Killa Nos. 2 and 3 of Rectangle No. 23, not covered by the Assistant Collector's ejectment order, dated May 31, 1962.

(34) In view of the law point involved, the parties are left to their own costs of the appeal.

MEHAR SINGH, C.J.— I agree.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit and H. R. Sodhi, JJ.

JAIMAL AND OTHERS,—*Petitioners.*

versus

THE COMMISSIONER, AMBALA DIVISION, AMBALA CANTT. AND OTHERS,—*Respondents.*

Civil Writ No. 1826 of 1968

March 21, 1969.

Punjab Village Common Lands (Regulation) Act (I of 1954)—*Sections* 7, 13 *and* 15—*Constitution of India* (1950)—*Articles* 14, 19, 31 *and* 31-*A*—*Validity of the Act—Whether immune under Article* 31-*A from attack for taking away any right conferred under Articles* 14, 19 *and* 31—*Section* 7—*Whether stands independent of the Act—Section* 7—*Whether discriminatory and* ultra vires *Article* 14 —*Section* 13—*Remedy by way of suit for ejectment in regard to village common land—Whether available to the Panchayat under the Act—Punjab Village Common Lands (Regulation) Rules* (1964)—*Rules* 19, 20, *and* 21—*Whether* ultra vires *section* 15.

Transfer of Property Act (IV of 1882)—*Sections* 108 *and* 116—*Tenant for a fixed term—Such tenant—Whether can be treated as trespasser after the expiry of the term of his lease.*

Held, that there can be no manner of doubt that Punjab Village Common Lands (Regulation) Act, provides for extinguishment to the rights of the proprietors in village common lands and vests the same in local Panchayats. A local Panchayat is a local authority within the meaning of Article 12 of the Constitution and thus included in the definition of "State". The result is that the Act falls in