the appeal was filed in the Supreme Court of India which cancelled the route permit granted to the petitioner somewhere in 1962. It is claimed that during this period of litigation the petitioner had not plied his motor vehicle on the said route for considerable time. In view of this averment as to facts, it was the duty of the Assessing Authority to find out as to when the petitioner had started operation of his motor vehicle on the said route permit. Unless the number of days in default had been found and the rate of penalty had been determined, the order imposing penalty under section 6(2) of the Act could not be passed. It is not permissible to impose a consolidated amount by way of penalty.

(5) Section 6(2) of the Act provides for a penalty to be imposed in addition to the amount of tax which makes it incumbent on the Assessing Authority to make assessment as to the tax due from the defaulter. Without making the assessment of the tax due the penalty cannot be imposed. Merely because the petitioner did not produce his accounts nor did he attend the office of the Assessing Authority in response to the notice issued to him, did not relieve the Assessing Authority of the duty cast upon him by Section 6 of the Act. For all these reasons. I hold that the order of the Assessing Authority is not in accordance with law and there is an error apparent on the face of it. The order, therefore, deserves to be quashed.

(6) For the reasons given above, this petition is accepted with costs. The impugned order of assessment, dated 10th July, 1964 and the appellate order, dated 26th September, 1964 are hereby quashed. The respondents will be at liberty to make fresh assessment in accoradnce with law keeping in view the observations made above. Counsel's fee Rs. 100.

K. S. K:

FULL BENCH

Before Mehar Singh, C.J., D. K. Mahajan and R. S. Narula, JJ.

DHAUNKAL,—*Appellant.*

versus

MAN KAUR AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 572 of 1968.

April 10, 1970.

Punjab Security of Land Tenures Rules (1956)—*Rules* 6(5) *and* 6(6)—*Collector making an order declaring surplus area of a land-owner—Notice to the tenant of such land-owner—Whether necessary—Order declaring*

surplus area passed without notice—Such order—Whether void or voidable—Punjab Security of Land Tenures Act (X of 1953)—*S.* 24—*Revisional powers of Financial Commissioner—Scope of.*

Held, that according to the provisions of Punjab Security of Land Tenures Act as well as Punjab Security of Land Tenures Rules, a land-owner or a tenant, who has more than thirty standard acres of land, has to select or reserve his permissible area, and the excess is available as surplus area. The Collector attending to such cases has to determine, therefore, three things—(a) the permissible area of a land-owner, (b) the permissible area of tenant, and (c) the surplus area. A land-owner in a case of this type may have to act in two capacities, as owner of land and also as landlord, and a tenant may be concerned in such proceedings in two ways, one as regards his permissible area which is allowed to him, and the other in the status of a tenant *qua* his landlord. No doubt, in the Act, there is no specific provision which says that a decision has to be given by any authority whether a permissible area has or has not been rightly reserved or selected by a land-owner or tenant concerned, but when the provisions of the Act with the rules referred to above are considered, it becomes plain that while determining the surplus area with a land-owner or a tenant the question of his permissible area comes to be determined. The rules make specific provision for filing the returns for selected area and, where there is failure in that respect, the power of the Collector to make the selection and also to impose the penalty. Without determining the matter of permissible area, it would obviously be practically impossible to determine the surplus area either of a land-owner or of a tenant. So that if there is a question in regard to the validity of reservation or selection of permissible area, it must come for consideration before the Collector when he disposes of the surplus area of a particular land-owner or a tenant. In Sub-rules (5) and (6) of Rule 6 of the Rules expressions used are 'the land-owner or tenant', and 'the landlord or tenant', and an opportunity of hearing is to be given to both, that is to say to the land-owner of the tenant, which refers to his position whether he has area in excess of permissible area or not, and to landlord or tenant, which refers to the status of those persons as persons who may be affected by the decision of area as surplus either with a landlord or with a tenant. Both sub-rules (5) and (6) also use the expression 'the person affected does not appear', and this is after making reference to the objections that may be filed by a land-owner or a tenant. So that it is clear that according to sub-rules (5) and (6) of rule 6, opportunity of hearing is to be given—(a) to a land-owner as such, and in his capacity as a landlord if there is a tenant under him, and (b) to a tenant in two capacities (i) for the purpose of determining his permissible area and (ii) as tenant under a landlord, who may have grievance with regard to the declaration of excess area, with his landlord as owner, as surplus area. The opportunity of hearing to a tenant, in any event, is envisaged by the use of the words 'the person affected does not appear' in sub-rules (5) and (6) of rule 6. So, before the Collector determines the permissible area of a land-owner or a tenant, he is to hear the land-owner and the tenant. The tenant has to be heard both in his capacity to determine his own permissible area

of tenancy as also in regard to any matter that may affect his tenancy by the declaration of surplus area of a land-owner as his landlord and the determination of his permissible area.

Held that the question of nullity of an order arises where there is want or lack of jurisdiction. The violation of principles of natural justice by an authority, while passing an order does not oust its jurisdiction and render the order void but it is voidable. Where the order is void it is *non-est* and may be ignored altogether, but, when it is voidable, the aggrieved party has to proceed to get rid of it in accordance with law, and where it fails to do so, it being within jurisdiction, remains, the party is then not in a position to say that it is *non-est*. The Collector has jurisdiction to decide the question of surplus area, if any, but while deciding this question if he commits breach of statutory rules in not hearing the tenant of that area, this does not render the order of the Collector void or a nullity, but only voidable and liable to be quashed or set aside at the instance of the aggrieved party, i.e. the tenant. (Para 9)

Held, that power and jurisdiction for revision of the Financial Commissioner under section 24 of the Act is the same as that of the High Court under section 115 of the Code of Civil Procedure. The interference in exercise of the revisional power has to be when the authority or the Court below in making the order under revision has either acted in excess of its jurisdiction or has assumed jurisdiction which it does not possess, or in the exercise of its jurisdiction it acts with material irregularity or commits any breach of the procedure laid down for reaching its conclusion. It is only when a conclusion of this type is reached that there may be interference in revision with an order under section 115 of the Code or section 24 of the Act by the Financial Commissioner. (Para 12)

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice R. S. Narula on 19th March, 1970 to a larger Bench for decision of an important questions of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice, Mr. Mehar Singh, the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice R. S. Narula finally decided the case on 10th April, 1970.

Letters Patent Appeal under Clause 10 of the Letters Patent against the Judgment dated 4th October, 1968 passed by the Hon'ble Mr. Justice Bal Raj Tuli in Civil Writ No. 2509 of 1965.

H. L. Sarin, Senior Advocate with Balraj Bahal, A. L. Bahl and H. S. Awasthy, Advocates,—for the Appellants.

F. S. Jain, and V. M. Jain, Advocates,—for the Respondents.

JUDGMENT

Mehar Singh, C.J.—The total area of land in the ownership of Man Kauri, respondent 1, on April 15, 1953; the date from which the

Punjab Security of Land Tenures Act, 1953 (Punjab Act 10 of 1953), became effective, was 228.65 ordinary acres, equivalent to 70.76 standard acres. She had not reserved any area; as the expression 'reserved area' is defined in section 2(4) of the Act, under any of the Acts mentioned in that definition. There was an amendment of the Act by the Punjab Security of Land Tenures (Amendment) Act, 1957 (Punjab Act 46 of 1957), which added to the principal Act sections 5-A, 5-B and 5-C. Punjab Act 46 of 1957 came into force on December 20, 1957. According to sub-section (1) of section 5-B, a land-owner who had not reserved any area previously has been given an apportunity to select his permissible area and to intimate the selection to the prescribed authority within the period specified in section 5-A, which is six months from the date as give above, and in such form and manner as may be prescribed. The form in this respect was not prescribed until Punjab Government Notification No. 3223-LR-II-57/1624, published in the gazette extraordinary of March 22, 1958; and the learned Financial Commissioner in *Dhanpat Rai* v. *State of Punjab* (1), therefore, rightly held that the selection could be made by a land-owner according to sub-section (1) of section 5-B within six months of the date of the publication of that notification, which means within six months of March 22, 1958. Respondent 1 Filed forms A, C and E; making selection of her permissible area under section 5-B(1), on June 20, 1958. The forms have been prescribed with the Punjab Security of Land Tenures Rules, 1956. So she had made the selection of her permissible area within the statutory period prescribed in sub-section (1) of section 5-B. Meanwhile, before the question of surplus area with respondent 1 could be determined in the wake of the selection made by her of her permissible area, consolidation of holdings in her village supervened. In consolidation obviously she lost the survey numbers of the land with her before consolidation and in lieu thereof, in repartition, came to be allotted to her new rectangles of land. The Surplus Area Collector of Sirsa attended to her case for the matter of finding out the surplus area with her on August 15, 1961. A copy of his order is Annexure 'A' made on August 29, 1961. He left with her permissible area of 60 ordinary acres, declaring 58.17 ordinary acres, equivalent of 17,48 standard acres; as her surplus area. In the account of her land, which he detailed in his order, he left out 119.25 ordinary acres,

(1) 1961 L.L.T. 9.

equivalent of 37.27 standard acres, as 'area under the old tenants in village Asa Khera'. In the last paragraph of his order he stated that 'Form F be prepared and sent to all concerned under rule 6(7) of the Punjab Security of Land Tenures Rules, 1956'. There is column 5 in Form F which reads—"Area out of area mentioned in column 4 which the tenant(s) concerned desire(s) to retain as his (their) permissible area (State name, parentage and residence of tenant(s)". Apparently, according to the direction in the last paragraph of the Surplus Area Collector's order, a copy of this form should also have been sent to those who were mentioned, if mentioned at all, in column 5 of Form F. It has been nobody's case that this part of the direction of the Surplus Area Collector was not complied with. With the order, copy Annexure 'A', of the Surplus Area Collector area given the rectangles, with Killa numbers and areas of Killa numbers, of the land of respondent 1 declared surplus, and what is to be noted at this stage is that rectangles 60 and 65 are not mentioned therein.

(2) An application under section 18 of the Act was moved by Dhaunkal appellant for purchase of 28 Bighas and 10 Biswas of land, old survey Nos. 103 min. (23-10), and 104(5-0), of which; after consolidation, the description has been rectangle 60/7(7-0), 8(7-11), 13(8-0), 14(7-8), 17(7-8), 18(8-0), 19(8-0), 20(8-0), 21(8-0), 22(8-0), 23(8-0), and 24(7-8), and rectangle 65/1(80-), 2(8-0), 3(8-0), 4(7-8), 10(8-0), and 11 min. (3-7). The original area of the old survey numbers was 25 Bighas and 10 Biswas and the increase probably occurred on account of the consolidation, but this is not a material matter or one of controversy in these appeals. The appellant claimed to have been the tenant of this land under respondent 1 and to have fulfilled the conditions of section 18 of the Act, which again are not matters of controversy at this stage. The position taken by respondent 1 was that the appellant was not her tenant of this land on April 15, 1953, when the Act came into force and, in any case; this land has been included by her; according to law, within her selected area, and that, therefore, according to sub-section (1) of section 18 of the Act, the appellant has not been entitled to purchase her selected or reserved area. The Assistant Collector First Grade in his order, copy Annexure 'B', of August 31, 1963, found on the evidence of the Patwari that in Kharif 1952 and Rabi 1953 respondent 1 had in her self-cultivation 82 Bighas and 5 Biswas of land and the Jamabandi of that year showed that 25 Bighas and 10 Biswas of land in question

was in the possession of the tenant. He referred to the statement of a clerk from the Surplus Area Collector's Office, Beg Raj, that respondent 1 had selected her permissible area, by filing Forms A, C and E, on June 20, 1958, a total area of 96 Bighas and 5 Biswas; including the old survey numbers sought to be purchased by the appellant as a tenant. He further pointed out that in Form F of the 1956 Rules, no area owner by respondent 1 in rectangles 60 and 65 was shown surplus. According to rule 6(1) of those rules it is the duty of a Patwari to prepare statement in Form D in the case of a land-owner who holds land in excess of the permissible area in the circle of the Patwari. Such a statement is then checked by the Circle Kanungo according to sub-rule (2) of that rule and forwarded to the Circle Revenue Officer. In Form D there is column 8 in this manner—'Name and parentage of tenants and particulars of area with each' . It is sub-rule (3) which provides that 'the Circle Revenue Officer shall, after holding such enquiry as he thinks fit and after giving the persons concerned an opportunity of being heard, forward his report to the Collector'. The Collector then checks not only Form D but also Forms A, C and E put in by a land-owner and sends the same to the Special Collector. Where the forms have been furnished to the Special Collector according to sub-rule (5) or where the same have been furnished to the Collector according to sub-rule (6) of this rule, that officer, 'after giving the land-lord or tenant an opportunity of being heard', makes such enquiry as he thinks fit and then assesses the surplus area of the land-owner concerned. It is accepted by the Assistant Collector First Grade that on the basis of Forms A, C and E, furnished by respondent 1, rectangles 60 and 65 were not included in her surplus area. He further pointed out in his order that according to the Patwari's evidence, from Kharif 1952 to Rabi 1953, respondent 1 had survey Nos. 93-min and 96-min, measuring 40 Bighas 14 Biswas, and 19 Bighas, respectively in her cultivating possession. So she had, apart from survey Nos. 90, 97 and 98; throughout area of those two survey numbers in her self-cultivation. It was also pointed out that while 19 Bighas of survey No. 96-min remained in her cultivation, 40 Bighas and 14 Biswas of survey No. 93-min had, with possession, gone over to respondent 1's Mukhtar Daulat Ram. This was the position according to the Assistant Collector First Grade in the year 1952-53; which would be the relevant time on April 15, 1953, in regard to the area in the self-cultivation of respondent 1 at the commencement of the Act. The Assistant Collector First Grade's reference in his

order to respondent 1 having in her self-cultivation 59 Bighas and 2 Biswas in the year 1957-58 is irrelevant, because what is material is the position on the date the Act came into force and not thereafter. The Assistant Collector First Grade then proceeded on the basis (a) that respondent 1 had failed to make reservation or selection of the area within the period prescribed at the beginning of the Act, (b) that she failed to include all the area under her self-cultivation in the area selected, and (c) that she selected an area which exceeded her permissible area; and thus came to the conclusion that the selection made by respondent 1 of her permissible area according to section 5-B(1) of the Act, as explained above, was not valid and not binding on the tenant, the appellant. On the finding that the appellant had been tenant for the statutory period on the land in question, the Assistant Collector First Garde by his order of August 31, 1963, copy Annexure 'B', proceeded to accept the application of the appellant under section 18 of the Act for purchase of the land, directing payment of the first instalment of the price wiwthin fifteen days of the date of the order and payment of the remaining instalments after every six months. Respondent 1 was in appeal from the order of the Assistant Collector First Grade to the Collector whose order, copy Annexure 'C', is of January 30, 1964. The appeal was accepted by the Collector who came to the decision that "the land in dispute has already been selected by the Collector Surplus Area, and the Assistant Collector First Grade has no jurisdiction to go over and above his order. The order of Collector Surplus Area can only be questioned by the Commissioner if anyone goes in appeal before him. Moreover section 25 of the Act is quite clear. The validity of any proceedings or orders taken or made under the Act shall not be called in question in any Court or authority except in accordance with the provisions of the Act." So the appeal of respondent 1 was accepted and the application under section 18 of the Act by the appellant was dismissed.

(3) It was after this that the appellant, either himself realised or was advised to do so, proceeded by way of appeal from the order, copy Annexure 'A', dated August 2t9, 1961, of the Surplus Area Collector, to the Commissioner. The order of the Assistant Collector First Grade in the appellant's application under section 18 of the Act made on August 31, 1963, shows that the Surplus Area Clerk: Beg Rai, was examined before that authority. His statement was recorded on November 21, 1962. By that date the surplus area of respondent 1 had

already been so declared by the Surplus Area Collector, copy of whose order is Annexure 'A'. So at least the appellant came to know of the existence of that order on November 21, 1962.

(4) The appellant preferred two appeals to the Commissioner, one from the order, copy Annexure 'A', dated August 29, 1961, of the Surplus Area Collector, of which he at least came to have knowledge on November 21, 1962, and this was preferred on April 17, 1964, and the other from the order, copy Annexure 'C', dated January 30, 1964, of the Collector, dismissing his application under section 18 of the Act, which was also probably preferred on the same date. The learned Commissioner found the first appeal patently barred by time, granting knowledge of the order of the Surplus Area Collector to the appellant on and from November 21, 1962, and, in any case, from the date of the order of the Assistant Collector First Grade, that is, August 31, 1963, and so dismissed that appeal. The consequence was that the order of the Surplus Area Collector remained a valid order and according to that order the land, which the appellant was seeking to purchase as tenant, formed part of the permissible area of respondent 1, and so the appellant could not succeed in view of express prohibition in this respect in sub-section (1) of section 18 of the Act. So, the other appeal was also dismissed by the Commissioner. Both the appeals of the appellant were dismissed by the Commissioner by his order of August 4, 1964, copy Annexure 'D'. The appellant then filed two revision applications to the Financial Commissioner from the orders of the Commissioner in both the appeals. The two revision applications of the appellant were heard together by the learned Financial Commissioner and disposed of on August 7, 1965. The learned Financial Commissioner in his order, copy Annexure 'E', says that "It is admitted that the petitioner-tenant (appellant) was in occupation of the respondent's (respondent 1's) land for the prescribed period. It is also admitted before me now that the land-owner's permissible area was selected by the Collector, Surplus Area, Sirsa, under section 5-B(1) by his order, dated August 29, 1961. In doing so the Collector manifestly ignored the provisions of section 5(b) inasmuch as he did not include in the land-owner's permissible area the land in her cultivation, and included, instead, land in the cultivation of the tenant. By committing this illegality he prejudiced the rights of the petitioner (appellant) under section 18 of the Act. * * * * * * * * * * * * * * * * .....the tenant having admittedly fulfilled the conditions prescribed by section 18, I am unable to see why he should be deprived of his

right to purchase the land. The Collector and the Commissioner have erred in allowing the land-owner to retain land as a part of her permissible area, which was unquestionably under the tenancy of the petitioner (appellant), thus depriving the latter of his valuable right.
* * * * * * * * *
The enactment is for their (tenants') benefit, and their rights must be safeguarded to the extent legitimately possible. I, therefore, set aside the orders of the Commissioner and the Collector and restore that of the Assistant Collector. So far as the land-owner is concerned, she will be allowed to make up her permissible area by including adjoining portions of her land now included in the surplus area." So the revision applications by the appellant were accepted and the order of the Assistant Collector First Grade, made under section 18 of the Act, was restored. While it is not clearly stated that the learned Financial Commissioner was setting aside for interfering with the order of the Surplus Area Collector, copy Annexure 'A', made on August 29, 1961, but obviously the substance of the order of the learned Financial Commissioner is to interfere with that order also.

(5) It was respondent 1 who made two petitions under Articles 226 and 227 of the Constitution from the order of the Financial Commissioner questioning the correctness and legality of that order and the jurisdiction of the Financial Commissioner to make the same. The two petitions are exactly identical, but it was probably thought that as the order of the Financial Commissioner arose out of the two revision applications of the appellant, so it was proper for respondent 1 to file two petitions against the same order. The petitions were heard together by the learned Single Judge who accepted the same by his judgment and order of October 4, 1968, quashing the order of August 7, 1965, of the Financial Commissioner, with the consequence obviously of the dismissal of the purchase application, under section 18 of the Act, of the appellant. No return having been filed by the appellant to the petitions of respondent 1, the learned Single Judge accepted the statement by respondent 1 in those petitions that "she had made reservation of 96 Bighas and 15 Biswas of land in 1958 which included 25 Bighas and 10 Biswas of land under the cultivation of Dhaunkal respondent (appellant) and which was comprised in Khasra No. 103-min (20-10), and 104-min (5-0). These Khasra numbers are stated to be in the tenancy of Dhaunkal respondent (appellant) in the order of the Assistant Collector, First Grade, Sirsa (Annexure 'B' to the writ petition) in various paragraphs. I have, therefore, to accept the assertion of the petitioner (respondent 1) that she had reserved this area

for herself as her permissible area in 1958. In view of this fact Dhaunkal respondent (appellant) has no right to purchase the same because it forms part of the petitioner's (respondent 1's) permissible area." The learned Judge then found that the Financial Commissioner proceeded on an error of fact and, therefore, in reaching his conclusion acted illegally in the exercise of his jurisdiction by accepting the revisions of Dhaunkal appellant and thus contrary to section 115 of the Code of Civil Procedure, under which section he was exercising his powers of revision according to Section 84 of the Punjab Tenancy Act, 1887 (Punjab Act 16 of 1887), in view of the provisions of section 24 of the Act. The learned Judge was of the opinion that the order made by the learned Financial Commissioner was without jurisdiction. An argument was then urged before the learned Judge that since Dhaunkal appellant had not been given a hearing before the Surplus Area Collector made his order on August 29, 1961, therefore that order was a nullity, with the consequence that Dhaunkal appellant could altogether ignore such a non-existent order. The learned Judge observed on this argument that "the order passed by the Collector was, therefore, not binding on Dhaunkal (appellant), but it cannot be said to be a void order or a nullity. This petition has not been made for the quashing of that order nor do I feel inclined to quash it for the reason that it is in accordance with the provisions of section 5 of the Act as found above and not in violation thereof. The petitioner (respondent 1) has made a categorical assertion in this petition that the Collector reserved for her permissible area which corresponded to the area selected by her in 1958 which assertion of hers has remained unrepudiated. The rights of Dhaunkal (appellant) have, thus, not been in any way affected by this order or by the consolidation proceedings." So this argument was repelled by the learned Single Judge. In consequence, as stated, the learned Judge quashed the orders of the learned Financial Commissioner made on August 7, 1965. It is against the judgment and order of the learned Judge, dated October 4, 1968, that Dhaunkal appellant has filed two appeals, Nos. 572 and 573 of 1968, obviously arising out of the two writ petitions under Articles 226 and 227 of the Constitution by respondent 1, these appeals being under clause 10 of the Letters Patent.

(6) There are three questions in these appeals that are for consideration of this Bench, the questions being—(a) whether in the case of permissible area selected either under sub-section (1), by the landowner himself, or under sub-section (2), by the Collector for him, of

section 5-B of Act 10 of 1953, requirements of the proviso to sub-section (1) of section 5 of the Act are or are not applicable; (b) whether, if the Surplus Area Collector does not give notice according to either sub-rule (5) or sub-rule (6), whichever may be applicable, of rule 6 of the 1956 Rules to a tenant, when making an order declaring surplus area of a land-owner, the order is a nullity and void, and the tenant can ignore it altogether, or whether it is only voidable at the instance of the tenant in proper proceedings; and (c) whether, in the facts of the present appeals, the Financial Commissioner had jurisdiction to interfere in exercise of his powers of revision having regard to section 24 of Punjab Act 10 of 1953 section 84 of Punjab Act 16 of 1887, and section 115 of the Code of Civil Procedure ?

(7) In so far as the first question is concerned, it has already been pointed out that within the scope of section 5-B of the Act and the time available according to that provision, respondent 1 made selection of her permissible area. The selection was thus made according to the statute and within time so far as section 5-B of the Act is concerned. The Assistant Collector of the First Grade dealing with the application of the appellant under section 18 of the Act was obviously in error when he considered that such a selection could only be available to respondent 1 according to statute if it had been a reserved area, as that expression is defined in section 2(4) of the Act, at the time of the coming into force of the same, that is to say, on April 15, 1953. It appears from the appellate order, copy Annexure 'D', of the Commissioner made on August 4, 1964, that before the Surplus Area Collector, respondent 1 did not so much rely on her selection of permissible area as given by her in Form E, which means that she did not herself make the selection according to sub-section (1) of section 5-B. It is further clear from that order that a statement of respondent 1 was taken by the Surplus Area Collector and after her statement had been taken and she had then agreed to the reservation that may be made for her by the Collector according to sub-section (2) of section 5-B, the reservation was made of the same area and in accordance with the same particulars as given by her in Form E. The Surplus Area Collector, therefore, made the reservation for her under sub-section (2) of section 5-B, but as that reservation has been admittedly exactly in conformity with the selection made by respondent 1 herself, there has been no controversy over the manner of reservation or selection made for her by the Collector. Section 5-B of the Act provides—

"(1) A land-owner who has not exercised his right of reservation

under this Act, may select his permissible area and intimate the selection to the prescribed authority within the period specified in section 5-A and in such form and manner as may be prescribed: Provided that a land-owner who is required to furnish a declaration under section 5-A shall intimate his selection along with that declaration (2). If a land-owner fails to select his permissible area in accordance with the provisions of sub-section (1), the prescribed authority may, subject to the provisions of section 5-C, select the parcel or parcels of land which such person is entitled to retain under the provisions of this Act: Provided that the prescribed authority shall not make the selection without giving the land-owner concerned an opportunity of being heard." It is immediately apparent that there is quite a difference in the language employed by the Legislature in sub-section (1) as compared to that in sub-section (2) of this section. The argument on the side of the appellant is, whether it was the selection made by respondent 1 herself under sub-section (1), or it was made for her by the Collector under sub-section (2), of section 5-B, in either case the selection could not be made except after compliance with the provisions of section 5 of the Act. In this respect particular reliance is placed by the learned counsel for the appellant on clause (b) of the proviso to sub-section (1) of section 5, according to which while making reservation a land-owner is required to include in his permissible area 'area under self-cultivation at the commencement of this Act other than the reserved area'. It is urged by the learned counsel that respondent 1 had not included the whole of the area under her self-cultivation at the commencement of the Act on April 15, 1953, and as she had left out some area in her self-cultivation and instead had included in her reserved or selected area, area of the appellant, a tenant of hers, so the selection made either by herself or by the Collector on her behalf under section 5-B has been contrary to clause (b) of the proviso to sub-section (1) of section 5 of the Act, and, that being so, the selection was not valid, not being in accordance with the statute. The Assistant Collector of the First Grade when attending to the appellant's application under section 18 was thus justified in ignoring what was not a selection made by respondent 1 according to law, or what was a selection made for her by the Collector not according to law. This is the approach which has ultimately succeeded with the learned Financial Commissioner. The reply on the side of respondent 1 is, first, that assuming what is pressed in this argument on the side of the appellant is correct, even so the Assistant Collector of the First Grade had no jurisdiction to sit in appeal or in revision over the order of the Surplus

Area Collector and he had no jurisdiction to ignore that order. To this extent apparently the argument is unanswerable, and the Collector in appeal was right when he came to this very conclusion. Secondly, it is urged on the side of respondent 1 that there is nothing in section 5-B which attracts any part of section 5 to the selection made by the land-owner or by the Collector for the land-owner under that section. If it was the object of the Legislature that the provisions of section 5 should also apply to selection to be made under section 5-B, nothing would have been more clear than a statement to the effect that the provisions of the section were subject to the conditions of section 5. Thirdly, it is urged on the side of respondent 1 that section 5-B refers to selection of permissible area and not to reservation of permissible area, to which latter class applies section 5, which does not apply to the former. It is pointed out that in *Gurbux Singh* v. *The State of Punjab* (2) at page 178, their Lordships in the Supreme Court observed that "the expressions 'reservation' and 'selection' involve the same process and indeed, to some extent, they are convertible, for one can reserve land by selection and another can select land by reservation." The learned counsel presses that section 5 deals with reservation only and for the present purpose reservation cannot be taken to be the same as selection in section 5-B. On the side of the appellant the learned counsel has pointed out that while sub-section (1) of section 5 deals with reservation of 'any parcel or parcels not exceeding the permissible area', exactly similar language has been used in sub-section (2) of section 5-B when the Collector may 'select the parcel or parcels of land which such person is entitled to retain under the provisions of this Act', and from the similarity of the language used in these two provisions and particularly these words—"entitled to retain under the provisions of this Act", at the end of sub-section (2), according to the learned counsel, there is indication of the clearest intention on the part of the Legislature that the provisions of section 5 have to be attracted to any selection under section 5-B, whether by the land-owner under sub-section (1), or for the land-owner by the Collector under sub-section (2). It is, however, pressed on the side of respondent 1 that, in any case, provisions of section 5 cannot be attracted to selection of permissible area according to sub-section (1) of section 5-B, because all the argument in this respect urged on the side of the appellant has relation to what the Collector has to do under sub-section (2) of that section. While under sub-section (1) a land-owner selects his permissible area and on that selec-

(2) 1967 P.L.R. 173.

tion no limitation whatsoever is placed, where he fails to do so, the Collector makes selection for him under sub-section (2) but with the limitation of 'the parcel or parcels of land which such person is entitled to retain under the provisions of this Act'. Sections 5-A, 5-B and 5-C were added to the Act by Punjab Act 46 of 1957, and the statement of objects and reasons as given in the Punjab Gazette, Extraordinary, of October 23, 1957, is—"To enable Government to assess surplus areas for the resettlement of tenants under section 10-A of the Punjab Security of Land Tenures Act, 1953, land-owners and tenants were required to furnish declaration in the prescribed forms. In the first instance period of two months was given to them for this purpose, which was subsequently extended to six months. This period expired on the 26th October, 1956, but response from them was extremely poor. It is now proposed to call upon only those land-owners and tenants who own or hold, as the case may be, land in excess of the permissible area, to file these declarations within six months and to provide a penalty for those who default or submit false declarations. Further a land-owner owning land in excess of the permissible area who may not have exercised the right of reservation under the said Act, is to be given the right to select his permissible area." What is urged on the side of respondent 1 is that the land-owners not having responded compliance with section 5 and there being no compulsive provisions in the Act, there was something like a stalemate until the Legislature intervened (a) by giving an incentive to the land-owners to have a free hand to make the selection of permissible area according to sub-section (1) of section 5-B, and, failing that, (b) by making two compulsive provisions (i) giving power to the Collector under sub-section (2) of section 5-B to make the selection for the land-owners, and (ii) further giving power to the Collector to impose penalty upon such land-owners by reducing their holding to ten standard acres under section 5-C. The learned counsel for respondent 1 points out that from the past experience the Legislature wanted to induce the land-owners to settle their permissible area voluntarily and towards that end it made provision for unfettered selection of permissible area under sub-section (1) of section 5-B, but then it proceeded, in the event of failure to provide for the compulsive provisions. So that the scope of sub-section (1) of section 5-B is to have no limitations on the selection by a land-owner while under sub-section (2) of section 5-B, when the Collector makes the selection for a land-owner, there may be limitations. Reference is then made on the side of respondent 1 to comparably provisions of sub-sections (1) and (2) of section 19-B of the Act. Sub-section (1) of section 19-B corresponds to sub-section (1) of section 5-B, and sub-section (2) of section 19-B to sub-section (2) of

section 5-B. In the case of sub-section (2) to section 19-B, when the Collector makes the selection for a land-owner same restrictions apply as in sub-section (2) of section 5-B and the position of a land-owner making the selection according to sub-section (1) of section 19-B is exactly the same as in sub-section (1) of section 5-B. It is pointed out that when once a land-owner makes his selection according to sub-section (1) of section 5-B, and subsequently by inheritance he acquires some more land, then he is given another opportunity to make a selection in the same manner by sub-section (1) of section 19-B, and if the argument on behalf of the appellant was accepted that sub-section (1) of section 5-B or sub-section (1) of section 19-B, or both, are subject to the provisions of section 5, then the result would be that there may be many cases in which there will be denial of right of selection to a land-owner under sub-section (1) of section 19-B. So on the side of respondent 1 the argument is that while a land-owner makes selection whether under sub-section (1) of section 5-B or sub-section (1) of section 19-B, he has a free and unrestricted choice to make the selection of land as his permissible area, but when he fails to do so and such selection is made for him by the Collector either under sub-section (2) of section 5-B or under sub-section (2) of section 19-B, then the Collector has the restriction that he can only make selection of 'the parcel or parcels of land which such person is entitled to retain under the provisions of this Act'. In sub-section (1) of section 5 the very expression 'parcel or parcels' appears as in sub-section (2) of section 5-B, and in the last-mentioned sub-section, in addition, selection can only be made by the Collector of such land that a land-owner is entitled to retain under the provisions of the Act, thus possibly bringing in the provisions of section 5. It is pointed out on the side of respondent 1 that she initially made the selection in Form E in the terms of sub-section (1) of section 5-B and on the approach that there is a difference in the selection made either under sub-section (1) or sub-section (2) of this section she could not possibly be deprived of the advantage to her, by her making the statutory selection herself, by the Collector merely obtaining a statement from her subsequently that she would be satisfied with his selection for her under sub-section (2) of section 5-B. In *Gurbux Singh's case* (2) this matter was also for consideration before their Lordships and at page 178 the observation made is that "It is true that under section 5(1), the land-owner has to include in his reserved area certain specified categories of land, but under section 5-B, his selection is not subject to any such restrictions. It may be that one of the objects of the amendment was to enlarge the discretion of the land-owner in the

matter of reservation or it may be that in the matter of selection the land-owner has to conform to the provisions of section 5(1). We leave open that question for future decision." So their Lordships did not decide this matter though in this observation the first part of the sentence supports the contention on the side of respondent 1. In the present case, however, it is not necessary to resolve this question in view of the approach of the learned Single Judge to the orders of the Financial Commissioner as being without jurisdiction having regard to section 24 of the Act, section 84 of Punjab Act 16 of 1887, and section 115 of the Code of Civil Procedure, and the approach that is being made to the other two questions in this reference.

(8) The second question arises out of an argument on the side of the appellant that the order, copy Annexure 'A', of August 29, 1961, of the Surplus Area Collector is a nullity on the ground that it was made without notice to the appellant and without hearing him as required by sub-rule (6) of rule 6 of the Punjab Security of Land Tenures Rules, 1956, hereafter to be referred as 'the 1956 Rules'. There is no manner of doubt that when the Surplus Area Collector made that order no notice with regard to the same was given to the appellant. The Surplus Area Collector was dealing with the question of surplus area with respondent 1. In the Act, leaving out the part of the definition concerning a displace person, the expression 'permissible area' is defined in section 2(3) of the Act, in relation to a land-owner or a tenant, to mean 'thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres such sixty acres', and in section 2(5-a) the expression 'surplus area' is defined to mean 'the area other than the reserved area, and, where no area has been reserved, the area in excess of permissible area selected under section 5-B or the area which is deemed to be surplus area under sub-section (1) of section 5-C and includes the area in excess of the permissible area selected under section 19-B but it will not include a tenant's permissible area'. There is a proviso which is not material here. A land-owner having area in excess of thirty standard acres has the excess as surplus. Similarly a tenant having in excess of thirty standard acres as his tenancy land, the excess is surplus. But, obviously, there may be a tenant, and there are many such cases in which there is a tenant, who has in his tenancy land much less than thirty standard acres, and that would come to be his permissible area. Reservation of permissible area was first provided in section 5 of the Act which was to be done by a land-owner or a tenant within a certain time. As there were no compulsive provisions in the Act for the land-owners and tenants to comply with this,

it appears that not many land-owners or tenants complied with section 5. The Legislature, therefore, added sections 5-A, 5-B and 5-C to the Act by Punjab Act 46 of 1957, which, as stated, came into force on December 20, 1957. Section 5-A requires a land-owner or a tenant to file declaration, supported by affidavit, within a period of six months from the date of coming into force of Punjab Act 46 of 1957. Section 5-B has already been reproduced above. Section 5-C provides for a penalty where a land-owner, or a tenant fails to furnish declaration, supported by an affidavit, as required by section 5-A, and the prescribed authority is given power then to reduce his holding to ten standard acres, thus leaving the rest as surplus utilizable by the State Government under section 10-A of the Act. Briefly, sub-section (1) of section 5-B says that if a land-owner did not exercise his right of reservation under section 5 in time, he may select his permissible area within the time within which he has to file the declaration under section 5-A, but if he fails to make such selection even under sub-section (1) of section 5-B, the prescribed authority may do so for him, subject to the penalty provisions in section 5-C, selecting 'the parcel or parcels of land which such person is entitled to retain under the provisions of this Act'. According to these provisions a land-owner or a tenant, who has more than thirty standard acres of land, has to select or reserve his permissible area, and the excess is available as surplus area. The Collector attending to such cases has to determine, therefore, three things (a) the permissible area of a land-owner, (b) the permissible area of a tenant, and (c) the surplus area. A land-owner in a case of this type may have to act in two capacities, as owner of land and also as landlord, and a tenant may be concerned in such proceedings in two ways, one as regards his permissible area which is allowed to him, and the other in the status of a tenant *qua* his landlord. The details for the determination of this matters are to be found in the 1956 Rules, and Part II of those rules deals with the subject of 'Assessment of Surplus Area'. It begins with rule 3 which deals with the form of declaration under section 5-A. A land-owner is to furnish declaration, supported by affidavit, in Forms A and C, and a tenant in Forms B and C, in view of section 5-A to the Collector as mentioned in this rule. Rule 4 then provides that 'an intimation under section 5-B(1) of the Act shall be furnished by a land-owner in Form E in the manner and to the officer as specified in rule 3, alnog with one additional copy thereof for the Patwari of every Patwar circle in which the land selected by such land-owner is situate, and rule 4-A provides for furnishing of receipt for the forms as referred to in rules 3 and 4 to the land-owner or the tenant giving the same.

Rule 4-B deals with reservation of permissible area that may be made by the Collector under sub-section (2) of section 5-B and the penalty that may be imposed by him either on a land-owner or a tenant under section 5-C of the Act. Rule 4-C concerns disposal of forms by the Special Collector under rules 3 and 4 where the area of a person is situate in more than one Patwar circle; rule 5 prescribes the relatives through whom self-cultivation may be carried out; and it is rule 6 which is really material and runs thus—

"6. Assessment of surplus area with land-owners and tenants,—

(1) Every patwari shall prepare, in duplicate, statements in Forms D and DD for every land-owner and tenant, respectively, who owns or holds land in excess of the permissible area in his circle, and shall retain one copy of each such Form himself and forward the other to the circle kanungo.

(2) The circle kanungo shall, after personal examination, attest all entries made by the patwari in Form D or DD and forward it to the circle revenue officer.

(3) The circle revenue officer shall, after holding such enquiry as he thinks fit and after giving the persons concerned, an opportunity of being heard, forward his report to the Collector.

(4) Where, in the case of land-owner, Forms A, C and E, and in the case of a tenant, Forms B and C, have been received by the Collector from the Special Collector under rule 4-C, the Collector shall, after holding such enquiry as he thinks fit, return them to the Special Collector along with Form D in the case of a land-owner and Form DD in the case of a tenant.

(5) In the case of a land-owner or tenant who has furnished his Forms to the Special Collector under rules 3 and 4, the Special Collector shall after giving the land-lord or tenant an opportunity of being heard and after such enquiry as he thinks fit, assess his surplus area. In doing so, he shall hear any objections made by the

land-owner or tenant, and in a written order decide such objections. In case no objections are made, or the person affected does not appear, the fact shall be stated in the order.

(6) In the case of land-owner or tenant who has furnished his Forms to the Collector under rules 3 and 4, the Collector shall, after giving the landlord or tenant an opportunity of being heard after such enquiry as he thinks fit, assess his surplus area. In doing so, he shall hear any objections made by the land-owner or tenant, and in a written order decide such objections. In case no objections are made or the person affected does not appear, the fact shall be stated in the order.

(7) (i) The Collector or the Special Collector shall prepare a statement in Form F and forward immediately a a copy thereof to the land-owner or tenant concerned under cover of an endorsement prescribed in the Form and it shall be served upon the land-owner or tenant as if it were a summons in the manner prescribed in section 90 of the Punjab Tenancy Act, 1887.

(ii) The Special Collector shall also forward a copy of Form F prepared by him to the Collector of every district in which the surplus area of the land-owner or tenant is situate.

(8) Any person aggrieved by a decision of the Collector or the Special Collector may, within 30 days from the date of communication of the decision to such person, to be computed after excluding the time spent in obtaining a copy of such decision, appeal to—

(a) the Commissioner of the Division where the person resides, in case the person resides in Ambala or Jullundur Division;

(b) the Commissioner of the Division where the largest portion of the holding of the person is situate, in case the person resides outside Ambala and Jullundur Division;

and the decision of the Commissioner which shall be duly communicated by the Commissioner to the Collector or Collectors concerned shall be final.

(9) The Collector or the Special Collector or the Commissioner shall not while deciding any case under this rule, entertain any claim from a land-owner for the exemption of any area on any of the grounds set forth in sub-rule (1) of rule 10."

This completes the procedure for decision of questions concerning permissible area of a land-owner or a tenant and surplus area with either. These rules deal with three cases, already referred to above, that is, the case of permissible area of a land-owner, the case of permissible area of a tenant, and the case of surplus area with either. No doubt, in the Act, there is no specific provision which says that a decision has to be given by any authority whether a permissible area has or has not been rightly reserved or selected by a land-owner or tenant concerned, but when the provisions of the Act with the rules referred to above are considered, it becomes plain that while determining the surplus area with a land-owner or a tenant the question of his permissible area comes to be determined. The rules make specific provision for filing the returns for selected area and, where there is failure in that respect, the power of the Collector to make the selection and also to impose the penalty. Without determining the matter of permissible area, it would obviously be practically impossible to determine the surplus area either of a land-owner or of a tenant. So that if there is a question in regard to the validity of reservation or selection of permissible area, it must come for consideration before the Collector when he disposes of the surplus area case of a particular land-owner or a tenant. It is such decision which is made appealable under sub-rule (8) of rule 6. A 'circle revenue officer' is defined to include any revenue officer authorised by the Collector to function as such in any Tehsil or part thereof. After the Patwari has prepared Form D in the case of a land-owner and Form DD in the case of a tenant, those forms, along with the forms put in by a land-owner or a tenant under rules 3 and 4, go before a Circle Revenue Officer and sub-rule (3) of rule 6 requires such an officer to hold such enquiry as he thinks fit, and after hearing the persons concerned he is to forward his report to the Collector. Now, there

is no detail given of the subject on which he is to report, but it is obvious in the context that his report concerns the permissible area and the surplus area of a land-owner or a tenant, as the case may be. In the present case nobody has said that the appellant was given a hearing by the circle Revenue Officer. However, the Circle Revenue Officer is not the final deciding authority in the matter; he is merely a reporting authority. His report comes before the Collector, Sub-rules (5) and (6) of rule 6 as reproduced above, are exactly the same except this that the former refers to 'the Special Collector', and the latter to 'the Collector'. So it is sufficient to refer here to sub-rule (6) alone. It is under this rule that the Collector assesses the surplus area and then proceeds to have Form F prepared under sub-rule (7) and he is then enjoined to forward immediately a copy thereof to the land-owner or the tenant concerned. It has already been stated that sub-rule (8) then deals with the subject-matter, of the appeal by an aggrieved person from the decision of the Collector or the Special Collector, as the case may be, to the Commissioner. In Form D there is a column giving the particulars of the tenants and the land with them so far as a land-owner is concerned, and such a person would be the person concerned as that expression is used in sub-rule (3). In sub-rules (5) and (6) the expressions used are 'the land-owner or tenant', and 'the landlord or tenant', and an opportunity of hearing is to be given to both, that is to say to the land-owner of the tenant, which refers to his position whether he has area in excess of permissible area or not, and to landlord and tenant, which refers to the status of those persons as persons who may be affected by the decision of area as surplus either with a landlord or with a tenant. Both sub-rules (5) and (6) also use the expression 'the person affected does not appear', and this is after making reference to the objections that may be filed by a land-owner or a tenant. So that it is clear that according to sub-rules (5) and (6) of rule 6, opportunity of hearing is to be given—(a) to a land-owner as such, and in his capacity as a landlord if there is a tenant under him, and (b) to a tenant in two capacities (i) for the purpose of determining his permissible area and (ii) as tenant under a landlord, who may have grievance with regard to the declaration of excess area, with his landlord as owner, as surplus area. The opportunity of hearing to a tenant, in any event, is envisaged by the use of the words 'the person affected does not appear' in sub-rules (5) and (6) of rule 6. So, before the Collector determines the permissible area of a land-owner or a

tenant, he is to hear the land-owner and the tenant. The tenant has to be heard both in his capacity to determine is own permissible area of tenancy as also in regard to any matter that may affect his tenancy by the declaration of surplus area of a land-owner as his landlord and the determination of his permissible area. It is obvious that as the tenant's permissible tenancy area cannot go as surplus area of a land-owner the tenant has interest that such area is not shown in the surplus area of the land-owner. Equally he has interest in his tenancy area, within of course the permissible area limit, not being shown in the permissible area of the land-owner, because, according to sub-section (1) of section 18 of the Act such area within the permissible area of the land-owner cannot be purchased by the tenant even though he otherwise fulfils the conditions of section 18 of the Act.

(9) Admittedly the appellant was neither heard by the Circle Revenue Officer under sub-rule (3) nor by the Collector under sub-rule (6) of rule 6. What was urged before the learned Single Judge, and which argument is reiterated here, is that the order of the Surplus Area Collector, copy Annexure 'A' of August 29, 1961, having been made behind the back of the appellant and without giving him an opportunity of hearing expressly provided in sub-rules (3) and (6) of rule 6 is a nullity, in other words, is an order which does not exist and which he may ignore with impunity. On the contrary the position taken on the side of respondent 1 is that such an order is in the nature of an *ex-parte* order and is not binding against the person against whom it is made, but such a person must have it set aside according to the procedure provided by law soon as he becomes aware of its existence and that if he does not do so, he cannot treat such an order as merely non-existent in law. On behalf of the appellant in support of this argument reliance is placed on three cases. The first of those cases in *Pari* v. *State of Punjab* (3), but in that case the impugned order was quashed because the aggrieved party had not been heard under sub-rule (3) of rule 6. My learned brother, Narula, J., did not say in that case that the order was a nullity. The second case is *Sahib Singh* v. *Deputy Chief Settlement Commissioner* (4), and in that case my learned brother, Narula, J., did hold that an order made without

(3) 1966 L.L.T. 176.

(4) 1967 Curr. Law Journal (Pb. & Har.) 760.

notice to the petitioner in that case was a nullity in view of the judgments of this Court in *Dhian Singh* v. *Deputy Secretary to Government, Punjab, Rehabilitation Department* (5), *Sampuran Singh* v. *The Chief Settlement Commissioner, Delhi* (6) and *Deep Chand* v. *Additional Director, Consolidation of Holdings, Punjab* not hold that an order without hearing a party is a nullity. In (7). In *Deep Chand's* case the learned Judges of the Full Bench did *Sampuran Singh's case* (6), all that the learned Judges held was that if no notice as required is given, the *ex parte* order is liable to be set aside, asd the learned Judges did not hold that such an order is a nullity. In *Dhian Singh's case* (5) also Dua, J., did not hold such an order to be a nullity and what the learned Judge observed was that the Tribunal concerned must also conscientiously satisfy itself before proceeding to hear and dispose of the case, *ex-parte* or in default, that such notice has in fact been duly served. So in none of the three cases did the learned Judges hold that such an *ex-parte* order is a nullity. And my learned brother, Narula, J., in *Sahib Singh's case* (4) was proceeding to point out infirmity in an order made *ex-parte* without notice to the party concerned of the type as in those three cases, with the result that such an order was liable to be set aside, obviously at the instance of the party aggrieved, and it is only in this sense that, as I understand *Sahib Singh's case* (4) my learned brother used the expression 'nullity' in regard to such an order. It was not meant that such an order is non-existent in law, for the cases, on the basis of which the observation has been made, do not show anything like this and all that has been held in those cases is that such an order is liable to be set aside. There is one other case to which reference has been made in his judgment by my learned brother, Narula, J., in *Sahib Singh's case,* and that is *The State of Madhya Pradesh* v. *Syed Qamarali* (8), It is a decision of their Lordships of the Supreme Court, and what had happened was that a police officer, who had after trial in a judicial Court been acquitted, was dismissed from service after enquiry substantially contrary to an express statutory rule in the Police Regulations, which provided that enquiry could only be held in certain defined circumstances, and in that case those circumstances did not exist, and it was because the enquiry was contrary to the

(5) 1959 P.L.R. 529.
(6) 1959 P.L.R. 926.
(7) 1964 P.L.R. 318.
(8) 1967 S.L.R. 228.

particular statutory rule that their Lordships held, and in the circumstances of that case it could not be held under that rule, that the order of dimissal was totally invalid and that it "had therefore no legal existence and it was not necessary for the respondent to have the order set aside by a Court". It is apparent that this was not an observation made in connection with the denial of hearing and thus an order having been made contrary to a principle of natural justice. It was a case of want of jurisdiction to hold the enquiry. So that case does not bear on the present question. In *Kesho Dass* v. *Financial Commissioner, Haryana* (9), Tuli J., was of the opinion that where there had been an order declaring surplus area without complying with sub-rule (3) or sub-rule (6) of rule 6, the order is a nullity, and the parties aggrieved are not bound by the same not having been made parties to the proceedings, and the learned Judge emphasises that persons to whom no such notice is given are not bound by such an order and they can ignore the proceedings. Here, as I take it, the learned Judge is using the word 'nullity' in the sense to which he himself refers as something not binding on the aggrieved party. Obviously it does not mean as something non-existent in law. What is not binding on a party but is an order of a Court or authority with jurisdiction, it would hold good until, after knowledge, that party has had it removed according to law. So that it is only in the sense as explained above that my learned brothers, Narula and Tuli, JJ., have used the word 'nullity' in the *cases of Sahib Singh and Kesho Dass,* and cannot be taken to have used that word in the sense that such an order is non-existent in law. In Halsbury's Laws of England, Third Edition, Volume 30, at page 719, it is stated that 'if the rules of natural justice are not observed, the decision will be voidable, not absolutely void' and the statement is based on *Dimes* v. *Grand Junction Canal Proprietors* (10), in which the decree of the Lord Chancellor had been challenged on the ground of personal interest and thus bias while sitting as a Judge in the cause, and the argument was that the decree was utterly without jurisdiction and completely void, but it was held that it was voidable and must consequently be reversed and not altogether void. Again in Halsbruy's Laws of England, Third Edition, Volume 11, at page 66, it is stated that ,a decision of an inferior tribunal will be quashed if the party against whom it is

(9) 1968 P.L.J. 366.
(10) (1852) 3 H.L. cases 759.

given was not given notice of the hearing', and this is based on the decision of the House of Lords in *Arthur John Spackman* v. *The Plumstead District Board of Works* (11), in which, at page 240, it was observed—"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice." In *Minet* v. *Johnson* (12), the plaintiff signed judgment against Johnson for possession of certain premises, and it was Hartley who was dispossessed of the premises, and it was he who sought interference with the judgment. It was observed that "If he had taken his point before Judgment had been signed, he would have been treated as though he were a defendant in the action; if he has done so after judgment has gone by default, without his knowing anything of the former proceedings, he must then also be allowed to defend. But the judgment must not be set aside as between the plaintiff and Johnson; it can only be set aside so far as it concerns him." In *Gill* v. *Lewis* (13), service having been effected on one of the joint tenants, the plaintiffs signed judgment in default of the non-appearance of the one who had been served and it was held that to obtain an effective judgment for possession against joint tenants, judgment must be obtained against both of them, and so the judgment was in effective. It will be seen that in none of these cases has an order made in absentia, or contrary to the principles of natural justice, been held to be void or a nullity, in the sense as not existing in law, but was held either as voidable or ineffective or open to being set aside and quashed. In *State of Orissa* v. *Dr. (Miss) Binavani Dei* (14), decision on the question of age of the respondent had been made without an adequate opportunity of being heard, and their Lordships observed

(11) (1885) 10 A.C. 229.
(12) 63 L.T. Rep. 507.
(13) (1956) 2 Q.B.D. 1.
(14) A.I.R. 1967 S.C. 1269.

that "If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof trancends the significance of a decision in any particular case". It will be seen that the language used by their Lordships is that "if the essentials of justice be ignored.....the order is a nullity" and in *Arthur John Spackman's case* (11), the House of Lords held that "there would no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice", and their Lordships were referring to the breaches of the principles of natural justice including one with regard to hearing before decision, but the effect was not described as a nullity. This case then came for consideration of their Lordships in The *D.F.O. South Gheri* v. *Ram Sanehi Singh* (15); but in that case their Lordships said that the impugned order must be set aside on the simple ground that it was passed contrary to the basic rules of natural justice; the infringment thereof had been again for non-hearing. Similar has been the approach of their Lordships in *State of Assam* v. *Hari Singh* (16); and *The Purtabpore Co. Ltd.;* v. *Cane Commissioner of Bihar* (17); In all these cases their Lordships did not use the word 'nullity' and at the same time held that an order made in the absence of a hearing contrary to the principles of natural justice must either be quashed or set aside. In *Ittyavira Mathai* v. *Varkey Varkey* (18); their Lordships held that "where a court having jurisdiction over the subject-matter and the party passes a decree it cannot be treated as a nullity and ignored in subsequent litigation even if the suit was one barred by time. If the suit was barred by time and yet the court decreed it, the court would be committing an illegality and, therefore, the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well settled that a court having jurisdiction over the subject-matter of the suit and over parties thereto, though bound to decide right may decide wrong, and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject-matter and it had the jurisdiction over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction.

(15) (1970) I S.C.W.R. 194.
(16) (1969) 2 S.C.W.R. 210.
(17) (1969) 1 S.C.C. 308.
(18) A.I.R. 1964 S.C. 907.

Courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullities. It is true that section 3 of the Limitation Act is peremptory and that it is the duty of the court to take notice of this provision and give effect to it even though the point of limitation is not referred to in the pleadings. Even so it cannot be said that where the court fails to perform its duty it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity. "This decision of their Lordships provides an anology which negatives this argument on the side of the appellant and the remedy available to the appellant was by way of an appeal from the Surplus Area Collector's order, which appeal he did file, but failed, because it was barred by time. In *Jardine* v. *Attorney-General for Newfoundland,* (19), at page 286, it was observed by their Lordships of the Privy Council—" ... ... although the clause in the present license is so framed as to provide that in case of the relevant default 'this license shall be null and void', this must be treated as an ordinary forfeiture clause making the license voidable at the option of the licenser. . . . . ."

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The question then is, was the word 'nullity' used by their Lordships of the Supreme Court in *Dr. Binapani Dei's case,* (14), in the sense of the order being non-existent in law, or in the sense of its being ineffective and liable to be set aside or quashed by proper legal proceedings? In view of the subsequent decisions of their Lordships of the Supreme Court to which reference has already been made and the other authorities referred to above, the word 'nullity' in *Dr. Binapani Dei's case,* (14). would seem to have been uesd in the sense in which the effect of the breach of the principles of nature justice has been stated by their Lordships in the other three cases recently decided in the Supreme Court as referred to above, which means that the use of the word 'nullity' has been in the sense that an

(19) 1932 A.C. 275.

order made in the absence of hearing of the party concerned is voidable and not something which does not exist in law. As already pointed out, the question of nullity arises where there is want or lack of jurisdiction and this was the argument in *Dimes's case,* (14), before the House of Lords, but the conclusion was that the violation of one of the principles of natural justice, in that case the decree having been made by a judge with personal interest, did not oust the jurisdiction and render the decree void but it was voidable. The difference, as far as I have been able to see, is that where a decree or order is void, it is *non-est,* and may be ignored altogether, but, when it is voidable, the aggrieved party has to proceed to get rid of it in accordance with law, and where it fails to do so, it being within jurisdiction remains and the party is then not in a position to say that it is *non-est.* In the present case the Surplus Area Collector had the jurisdiction to decide the question of surplus area, if any; with respondent 1, and he has committed breach of statutory rules in not hearing the appellant, which, in the approach as above, does not render the order of the Surplus Area Collector void or a nullity, but only voidable and liable to be quashed or set aside at the instance of the aggrieved party, in this case the appellant.

(10) If the facts are to be taken from the order of the Assistant Collector First Grade, an order made under section 18 of the Act, copy Annexure 'B', on August 31, 1963, the appellant knew of the order of the Surplus Area Collector declaring surplus the area of respondent 1, on and from November 21, 1962, as is clear from the Commissioner's order, copy Annexure 'D'. The order made by the Assistant Collector of the First Grade was of August 31, 1963. The appeal from the Surplus Area Collector's order of August 29, 1961, copy Annexure 'A', to the Commissioner having been filed on February 18, 1964, was barred by time from both the dates, that is to say from November 21, 1962, as also from August 31, 1963. So the Commissioner dismissed that appeal as barred by time. There is one matter that has to be noted at this stage and that is this, that so far as the Surplus Area Collector's order of August 29, 1961, copy Annexure 'A', is concerned, nothing therein indicates that respondent 1, had not included within her permissible area all the land that was in her self-cultivation on the date the Act came into force on April, 15, 1953. It would be wrong to take facts from collateral proceedings and on the basis of those facts to say that the order of the Surplus Area Collector suffers from infirmity for ignoring the provisions of section 5 of the Act. If

in appeal from the Surplus Area Collector's order or in revision against that order a matter like this had to come in for consideration, the only proper course would have been, if that could be done according to law and the appellate authority or the revisional authority had the jurisdiction to do so, to remit the case back to the Surplus Area Collector to find this out as a fact. This obviously has not been done, the learned Financial Commissioner Proceeding on the basis of the record not of the surplus area case but of the purchase case under section 18 to a finding of fact relevant to the surplus area case of respondent 1. It is true that if the order of the Surplus Area Collector was to be treated as a nullity, the Commissioner's order saying that appeal against such an order by the appellant was barred by time will obviously have no meaning, for the simple reason that the order does not exist in law, but it has already been pointed out that that is not an order of this type. It is an order *ex parte* made in the absence of the appellant which does not bind the appellant in as much as the appellant could by a move in the proper forum have it readily set aside or quashed, but if in spite of having an opportunity to have it quashed according to law he fails to do so, either because he does not move against the order at all even after knowledge, or because he moves against it after the expiry of time prescribed by law within which he must move, then an order like this cannot be treated as non-existent in law. In the present case the appellant did move against the order in appeal before the Commissioner, but the appeal was found barred by time. So this argument on the side of the appellant that the order of the Surplus Area Collector, copy Annexure 'A', of August 29, 1961, is a nullity cannot be accepted.

(11) There is another aspect of this very argument that has been urged by the learned counsel for the appellant and that is this, that, as the Act makes no provision for decision on the permissible area of a land-owner or a tenant, a tenant like the appellant has no opportunity to question a form like Form E put in by respondent 1, under sub-section (1) of section 5-B, or selection made by the Collector, just as in the case of respondent 1, under sub-section (2) of section 5-B, so the only opportunity which a tenant like the appellant has is to question the legality and validity of selection by a land-owner or for him by the Collector in proceedings under section 18 of the Act, because sub-section (1) of section 18 of the Act specifically provides that a tenant cannot make a purchase application in regard to reserved, which also means selected, area of a land-owner. In this

respect the learned counsel for the appellant refers to *Raghbir Singh* v. *Financial Commissioner*, (20), in which the learned Judge finding defect or irregularity in the reservation, make an order in a writ petition under Article 226 of the Constitution, arising out of purchase proceedings under section 18 of the Act, and gave a dircetion that the defective part of the selection or reservation of the land-owner may be left out in lieu of which he may be given other land that could be given to him according to law, and then the application of the tenant for purchase under section 18 be dealt with and disposed of. There is reference to the decision of *Raghbir Singh's case* in *Banwari Lal* v. *The Financial Commissioner, Punjab* (21). On the face of it *Raghbir Singh's case* (21), has a tendency to support this argument of the learned counsel for the appellant, but the matter was not urged and argued before the learned Single Judge whether the tenant has or has not the right of hearing before the Collector when the surplus area of his land-owner-londlord, is determined which also includes the determination of the permissible area of such a land-owner and the permissible area of such a tenant. It was not a matter of argument before the learned Judge that in view of sub-rules (5) and (6) of rule 6 of the 1956 Rules this is a matter with regard to which a tenant has the right to be heard before the Collector had made his order detemining the permissible area of the land-owner and the tenant and the surplus area with either, either of them aggrieved against the order in whatever capacity, has a right of appeal under sub-rule(8) of rule 6. So that the validity or otherwise of a reservation or selection can be determined at the instance of either in such proceedings. No argument in this respect was urged and obviously as the matter was not a matter of controversy before the learned Single Judge, a direction was made by the learned Judge in that case that the matter of the validity of the reservation or selection be determined and then the purchase application be disposed of. The only reasonable way to consider *Raghbir Singh's case* (21), is that the validity or otherwise of the reservation or selection by the land-owner has to be considered having regard to sub-rules (3) to (6) of rule 6 of the 1956 Rules and after that had been determined, the question of the purchase application may then be dealt with, in the wake of such a decision on the question of the permissible area of a land-owner. There are more serious objections to the re-opening of the question of the validity and legality of the

(20) 1964 P.L.J. 37.
(21) 1967 P.L.J. 122.

reservation or selection by a land-owner in purchase proceedings under section 18 of the Act, and two matters come immediately to mind. The first matter is that after such a reservation or selection has been made, a purchase application by a tenant under section 18 may not be made for quite a number of years; so that the position of the land-owner will remain in suspense and at the mercy of a tenant without any definable limit of time. It is not necessary that a tenant immediately after completing six years of tenancy may make an application of purchase under section 18 for nothing compels him to do so, and he may well wait as he likes. The second is perhaps even more serious consideration and that is that if there are more tenant than one with a land-owner, and the legality and validity of selection or reservation can be questioned in purchase proceedings under section 18 of the Act, and as the second or the third tenant will not be a party to the application by the first tenant, this question may be raised in successive applications under section 18 by each tenant made separately according as he qualifies to make the same and as it should suit him. So that it is not envisaged either by the statute or by the rules that a matter like this should become a matter of controversy in an application under section 18 of the Act. It is a matter that is determined by the Collector when determining surplus area of a land-owner or a tenant according to sub-rules (3) to (6) of rule 6 of the 1956 Rules; which provide a complete procedure for determination of all the questions relevant to the matter including a provision for appeal. The learned counsel for the appellant has then referred to *Surja* v. *Hardeva* (22); in which their Lordships in the Supreme Court held that "under section 18 of the Punjab Security of Land Tenures Act a tenant is only entitled to purchase land which is not included in the reserved or selected area of the land-owner. Under section 18(2) the Assistant Collector is only authorised to determine the value of the land after making such enquiries as he thinks fit. He is not authorised expressly to go into the question whether the land sought to be purchased is included in the reserved or selected area of the land-owner. But obviously it must be the intention that he should go into these questions before embarking on determining the price. By wrongly deciding that question he cannot finally confer on himself jurisdiction to deal with the matter (as) the question whether the land sought to be purcased by the tenant under section 18.....was part of the reserved or selected area was jurisdictional fact. "The learned

(22) 1969 P.L.J. 197.

counsel contends that whether a particular area sought to be purchased by a tenant is or is not part of the reserved area of a land-owner; being a jurisdictional fact, *Gurbux Singh's case* (2), was rightly decided and; in the present case; it was not necessary for the appellant at all to bother himself about the proceedings before the Surplus Area Collector under section 5-A and 5-B, and under sub-rules (3) to (6) of rule 6 of the 1956 Rules. It is apparent that the argument is untenable on the very decision of their Lordships and the facts in *Surja's case* (22), All that their Lordships decided in that case was that where it is alleged as a fact that a particular piece of land is not part of reserved or selected area of a land-owner, this question of fact as jurisdictional fact may be decided by the authority having jurisdiction to decide the purchase application under section 18, but there is nothing in their Lordship's judgment which goes to support an argument that there being no dispute about what is included in the reserved or selected area, the validity of such reservation or selection can be questioned before the authority having jurisdicton under section 18 of the Act to deal with the purchase application of a tenant. *Surja's case* (22), does not support this argument. So even this aspect of the argument cannot be accepted.

(12) The power and jurisdiction for revision in Punjab Act 10 of 1953 is provided in section 24, which in the same as in section 84 of of Punjab Act 16 of 1887, Sub-section(1) of section 84 of the last-mentioned Act says that the Financial Commissioner may at any time call for the record of any case pending before, or disposed of by, any Revenue Officer or Revenue Court subordinate to him, and according to sub-section(5) of the same section, the Financial Commissioner can only interfere, in such a case, if he is of the opinion that it is expendient to do so with the proceedings or the order or decree on any ground on which the High Court in the exercise of its revisional jurisdiction may, under the law for the time being in force, interfere with proceeding or a decree of a civil Court. Such power of the High Court is given in section 115 of the Code of Civil Procedure, according to which section the High Court has power and jurisdiction to interfere in revision in a case decided by a Court subordinate to it on three grounds, if such a Court appears to it "(a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity." These then are the only three grounds on the basis

cl which the Financial Commissioner can interfere with the proceedings or the order or decree of any Revenue Officer or Revenue Court subordinate to him, and it is on the basis of these three grounds alone that the learned Financial Commissioner could, in this case, interfere with the order of the Commissioner, dismissing the appeal of the appellant as barred by time from the order of the Surplus Area Collector, and with the order of the Surplus Area Collector. In *Joy Chand Lal Babu* v. *Kamalaksha Chaudhry,* (23), the Privy Council held that "There have been a very large number of decisions of India High Courts on section 115 to many of which their Lordships have been referred. Some of such decisions prompt the observations that High Courts have not always appreciated that although error in a decision of a subordinate Court does not by itself involve that the subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under sub-section (c), nevertheless, if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under sub-section (a) or sub-section (b) and sub-section (c) can be ignored. "This was approved by their Lordships of the Supreme Court in *Keshavdeo Chamria* v. *Radha Kissen Chamria,* (24), at page 28, and their Lordships further approved the observations of Bose J., in *Narayan Sonaji* v. *Sheshrao Vithoba,* (25), wherein it was said that "the words 'illegally' and 'material irregularity' do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the fomalities which the law pescribes have been complied." While dealing with the facts of that particular case their Lordships further observed ——"It is plain that the order of the Subordinate Judge dated 25th April, 1945, was one that he had jurisdiction to make that in making that order he neither acted in excess of his jurisdiction nor did he assume jurisdiction which he did not possess. It could not be said that in the exercise of it he acted with material irregularity of committed any breach of the procedure laid down for reaching the result. All that happened was that he felt that he had committed an error in dismissing the main execution while the

(23) (1949) 76 Ind. App. 131.
(24) A.I.R. 1953 S.C. 23.
(25) A.I.R. 1948 Nag. 258.

was merely dealing with an adjournment application. It cannot be said that his omission in not taking into consideration what the decree-holder's pleader would have done had he been given the opportunity to make his submission amounts to material irregularity in the exercise of jurisdiction." So that it is settled by these cases that the interference in exercise of revisional power and jurisdiction under section 115 of the Code of Civil Procedure has to be when the authority or the Court below in making the order under revision has either acted in execise of its jurisdiction or has assumed jurisdiction which it does not possess, or in the exercise of its jurisdiction it acts with material irregularity or commits any breach of the pocedure laid down for reaching its conclusion. It is only when a conclusion of this type is reached that there may be interference in revision, otherwise there is no jurisdiction to interfere in revision with an order under section 115 of the Code. In *Chaube Jagdish Prasad* v. *Ganga Prasad Chaturvedi*, (26), their Lordships held that "section 115, Civil Procedure Code, empowers the High Court, in cases where no appeal lies, to satisfy itself on three matters: (a) that the order made by the subordinate Court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise its jurisdiction; (c) that in exercising the jurisdiction the Court has acted illegally, that is, in breach of some provision of law or with material course of the trial which is material in that it may have affected the ultimate decision. Therefore if an erroneous decision of a subordinate Court resulted in its exercising jurisdiction not vested in it by law or failing to exercise the jurisdiction so vested or acting with material irregularity or illegality in the exercise of its jurisdiction the case for the exercise of powers of revision by the High Court is made out. If a subordinate Court has jurisdiction to make the order it made and has not acted in breach of any provision of law or committed any error of procedure which is material and may have affected the ultimate decision, then the High Court has no power to interfere. But if on the other hand it decides a jurisdiction fact erroneously and thereby assumes jurisdiction not vested in it or deprives itself of jurisdiction so vested then the power of interference under section 115, Civil Procedure Code, becomes operative "Similarly in *Manindra Land and Building Corporation Ltd.*, v. *Bhutnath Banerjee*, (27), their Lordships held that "It is not open to the High Court in the exercise of its revisional jurisdiction under section 115, to question the findings of fact recorded by a subordinate

(26) A.I.R. 1959 S.C. 492.
(27) A.S.R. 1964 S.C. 1336.

Court. Section 115 applies to cases involving questions of jurisdiction, i.e., questions regarding the irregular exercise or non-exercise of jurisdiction or the illegal assumption of jurisdiction by a Court and is not directed against conclusion of law or fact in which question of jurisdiction are not involved." In *Pandurang Dhondi Chougule* v. *Maruti Hari Jagdev*, (28), their Lordships held that "the High Court cannot while exercising its jurisdiction under section 115, correct errors of fact, however gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute itself. It is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the execise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. Points of law may arise which are related to question of jurisdiction. A plea of limitation or plea of *res judicata* is a plea of law which concerns the jurisdiction of the Court which tries the proceedings." Again in *Ratilal Balabhai Nazar* v. *Ranchodbhai, Shankerbhai Patel*, (29), their Lordships held that "erroneous construction placed upon a statute trial Court does not amount to exercising jurisdiction illegally or with material irregularity and would not furnish a ground for interference under section 115, Civil Procedure Code." It is in the wake of this approach to section 115 of the Code of Civil Procedure that the order made by the learned Financial Commissioner in this case has been considered by the learned Single Judge, and very properly, and it has been found not to fall within the grounds on the basis of which there can be interference under section 115.

(13) In so far as the order, copy Annexure 'D', dated August 4, 1964, of the Commissioner, dismissing the appeal of the appellant from the order, copy Annexure 'A', dated August 29, 1961, of the Surplus Area Collector, is concerned, the learned Financial Commisioner has not said one simple word about it or given one reason why he has set aside that order and what was the basis upon which he proceeded to do so. He has not said that the Commissioner exercised jurisdiction that was not vested in him by law, or that he failed to exercise jurisdiction so vested in him, or that he acted in the exercise of his jurisdiction illegally or with material irregularity. The Commissioner had the jurisdiction to hear the appeal of the appellant from the order of

(28) A.I.R. 1966 S.C. 153.

(29) A.I.R. 1966 S.C. 439.

the Surplus Area Collector. If he had dismissed his appeal as barred by time on wrong basis, it could be said that he had failed to exercise jurisdiction vested in him by giving a wrong decision thereby, but the learned Financial Commissioner has not said that the Commissioner erred in giving his decision that the appeal of the appellant against the order of the Surplus Area Collector was barred by time, what to say of his giving reasons why and how that order of the Commissioner is wrong in any manner whatsoever. So there is no finding by the learned Financial Commissioner that the Commissioner failed to exercise jurisdiction vested in him. There is nothing to indicate it so, nor is there a finding by the learned Financial Commissioner that the Commissioner acted in the exercise of his jurisdiction illegally or with material irregularity. Consequently the learned Financial Commissioner could not interfere with the appellate order of the Commissioner dismissing the appeal of the appellant from the order of the Surpuls Area Collector as barred by time, so far as his power and jurisdiction of revision in the wake of section 115 of the Code of Civil Procedure are concerned. The learned counsel for the appellant has contended that even though the Financial Commissioner has given no reason for reversing the Commissioner's order that the appellant's appeal from the Surplus Area Collector's order was barred time, but, as it is apparent that the order of the Commissioner was basically wrong, in writ proceedings there ought not to be interference with the decision of the Financial Commissioner upon the mere technicality of absence of reasons for his decision. The learned counsel refers to sub-rule (8) of rule 6, according to which any person aggrieved by the decision of the Collector or the Special Collector may, within thirty days from the date of the communication of the decision to such person, to be computed after excluding the time spent in obtaining a copy of such decision, appeal to the Commissioner concerned, and the learned counsel points out that in the present case it is nobody's allegation or averment that after the Surplus Area Collector had given his decision, copy Annexure 'A', dated August 29, 1961, accepting the Selection by respondent 1 or making selection for her with regard to her permissible area and determining her surplus area, the order was communicated to the appellant. He seeks support from *Vir Singh* v. *The State of Punjab* (30), which supports him to this extent, but the appellant cannot get away from the facts of the present case. The order, copy Annexure 'A', of August 29, 1961, of the surplus Area

(30) 1970 P.L.J. 70.

Collector clearly mentions that according to sub-rule (7) of rule 6 of the 1956 Rules, Form F be prepared and sent to all concerned. It was never the allegation of the appellant that no such form reached him. It will be presumed that the order of the Surplus Area Collector was duly carried out and, as stated, there has been no averment to the contrary. In fact not until the stage of the revision application before the Financial Commissioner did the appellant even say that the Surplus Area Collector's order, copy Annexure 'A', of August 29, 1961. was *ex parte* against him, and it was for the first time before the learned Single Judge that it was urged that it was a nullity because it had been made without hearing the appellant. So in the facts of this case this argument is not available to the appellant. Interference by him in setting aside of the order of the Commissioner in the circumstances has been outside the scope of section 115 and thus beyond his jurisdiction. It is, however, urged by the learned counsel for the appellant that, even if that is so, the learned Financial Commissioner had the jurisdiction to look into the record of the case and the decision given by teh Surplus Area Collector directly leaving aside the decision given by the Commissioner, and I think in this the approach of the learned counsel is correct, because under section 84 of Punjab Act, 16 of 1887, the learned Financial Commissioner has the power to call for the record of any case pending or disposed of by an officer or Court subordinate to him, and this power would bring in the case disposed of by the Surplus Area Collector. But then the power and jurisdiction of the learned Financial Commissioner to interfere in revision with such an order, as that of the Surplus Area Collector in this case, is also exactly the same under section 115 and on the very limited grounds as already mentioned. The learned Financial Commissioner has not shown that the Surplus Area Collector exercised jurisdiction not vested in him under Act 10 of 1953, while deciding the surplus area case of respondent 1, the fact of the matter being that he gave the decision very much within his jurisdiction. The Surplus Area Collector did not fail to exercise jurisdiction vested in him and there is no finding by the learned Financial Commissioner that he so failed. The Surplus Area Collector has not been shown to have acted in the exercise of his jurisdiction illegally or with material irregularity in the sense that he has followed any wrong procedure as against the one provided for such cases in the statute. There is no such finding by the learned Financial Commissioner in this respect either. In other words, there is no finding of the learned Financial Commissioner that he has exercised

his power in relation to any one of the clauses (a), (b) and (c) of section 115 of the Code of Civil Procedure. The learned Financial Commissioner appears to have been of the opinion that the Surplus Area Collector was in error in law in not proceeding on the basis of section 5 of Punjab Act 10 of 1953 in this case when determining surplus area of respondent 1, and this would be an error in law and an erroneous construction placed by the Surplus Area Collector on sections 5 and 5-B of Punjab Act 10 of 1953, but such a ground is not available for interference under section 115 of the Code as expressly held in *Ratilal Balabhai Nazar's case* (29) by their Lordships of the Supreme Court. This is apart from the contention of the learned counsel for respondent 1, based on *Banwari Lal* v. *The Financial Commissioner, Punjab* (31), in which Shamsher Bahadur J., held that a tenant cannot purchase the land under section 18(1) of Punjab Act 10 of 1953, where a tenancy land is included in the reserved area even if the land-owner has deliberately omitted to include areas under his self-cultivation in his reservation. So that the learned Financial Commissioner has given no reason how either the appellate order of the Commissioner or the original order of the Surplus Area Collector comes under any of the three clauses (a), (b) and (c) of section 115 of the Code of Civil Procedure, and, as already stated, those clauses are not attracted to the facts and circumstances of the present case and to those orders, but what he has done is to proceed on the basis that both the Commissioner and the Surplus Area Collector have been in error in law in deciding the surplus area case of respondent 1 under section 5-B without applying the provisions of section 5 of Punjab Act 10 of 1953 to the case. However, such an error did not bring the case within the revisional jurisdiction of the Financial Commissioner under any of the clauses (a), (b) and (c) of section 115 of the Code of Civil Procedure. So the learned Single Judge had no option in this case, but to quash the order of the learned Financial Commissioner.

(14) If the learned Financial Commissioner had found an error of jurisdiction with the order of the Commissioner and come to the conclusion that the Commissioner had failed to exercise appellate jurisdiction vested in him by giving a wrong decision that the appeal before him by the appellant was barred by time, then the only course open to him was to set aside the appellate order of the Commissioner and remit the case back to him for hearing of the appeal of

(31) 1967 P.L.J. 122.

the appellant by the Commissioner on merits. If that had happened, and the appeal had been heard on merits by the Commissioner, the powers in appeal being entirely different and wide a mere error of law committed by the Surplus Area Collector might have been open to review by the Commissioner in appeal. This is what, however, has not happened in the present case. In the circumstances, as has been stated, the learned Single Judge had no option, but to accept the petitions of respondent 1 and to quash the orders of the learned Financial Commissioner. In this approach, these two appeals fail and are dismissed, but, in the circumstances of the case, the parties are left to their own costs.

D. K. MAHAJAN, J.—I agree.

R. S. NARULA, J.—I also agree.

K.S.K.

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