damages. It must, therefore, be held that the prayer for reinstatement as made by the petitioner in the present writ petition is misconceived.

(12) For the foregoing reasons, there is no merit in the writ petition which stands dismissed with no order as to costs.

R.N.M.

APPELLATE CIVIL

Before D. K. Mahajan and A. D. Koshal, JJ.

KARAM SINGH,—*Appellant.*

versus.

HARTEJ BAHADUR SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 297 of 1966.

November 6, 1969.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 43—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (I of 1948)—Section 23—Tenant dispossessed of his tenancy before the commencement of the consolidation proceedings in the village—Consolidation proceedings carried out and finalised—Application under section 43 by the tenant to regain possession thereafter—Whether maintainable—Such tenant—Whether has a remedy under the Consolidation Act.

Held, that if the tenant is deprived of the possession of the land comprised in his tenancy forcibly before the Consolidation work is started, the provisions of section 43 of the Pepsu Tenancy and Agricultural Lands Act, 1955, at once come into play and whether any consolidation work is commenced thereafter or not the tenant acquires the right as from the date of dispossession to move the Collector under the provisions of that section. The section comes into play in the case of a forcible dispossession of the tenant by the landlord and hence an application under this section by the tenant to regain possession of the land is maintainable even after the consolidation proceedings are carried out and finalised.

(Paras 7 and 8)

Held, that a tenant *opt of possession* whose title is disputed by the landlord has no right to an allotment under the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, unless the entries in the revenue records support his claim. If a tenant

has been dispossessed before the consolidation operations started in the estate, it is reasonable to presume that the *khasra girdawari* prepared by the revenue authorities will cease to mention him as a tenant from then onwards. The consolidation authorities will not recognise any right of allotment in him because a claim of a tenant dispossessed earlier to consolidation proceedings, is outside the purview of the Consolidation Act and of the jurisdiction of the Consolidation Officer. Where a remedy is available to any person within the frame work of the Consolidation Act, that is the remedy which he must pursue. The remedy under the consolidation Act, is however, not open to a tenant ousted before the consolidation operation started, as such a tenant has no status under the Consolidation Act. (Paras 10 and 12).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice R. S. Narula, dated 26th August, 1966; passed in Civil Writ No. 2146 of 1968.

S. P. GOYAL, ADVOCATE, for the appellant.

RATTAN SINGH, ADVOCATE, for the respondents.

JUDGMENT

KOSHAL, J.—In this appeal under clause 10 of the Letters Patent against the judgment, dated the 26th of August, 1966, of Narula, J., the sole question arising for decision is as to whether a tenant, who has been forcibly dispossessed by his landlord sometime prior to the commencement of the consolidation proceedings in the village where the land covered by the tenancy is situate, is entitled to regain the possession of that land by recourse to section 43 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Act) in spite of the fact that the said proceedings have been carried out and finalised.

(2) The facts giving rise to the appeal may be briefly stated. The disputed land is situated in village Khangarh, District Sangrur, and belongs to Hartej Bahadur Singh respondent No. 1, under whom the appellant was holding it as a tenant. Before the commencement of the consolidation proceedings in the village, respondent No. 1 obtained possession of the land which was done, according to him, by a compromise between himself and the appellant and, according to the latter, illegally and forcibly. In 1957-58 the consolidation authorities, acting under section 23 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be referred

to as the Consolidation Act), handed over possession of the land comprised in the tenancy of the appellant to respondent No. 1.

(3) The appellant and one Tek Singh, filed an application under section 43 of the Act on the 23rd of January, 1959, before the Collector praying for ejectment of respondent No. 1 from the disputed land or for possession in respect thereof on the ground that they had been dispossessed therefrom forcibly. The application was dismissed by the Collector on the 10th of April, 1961, with the finding that the proper remedy for the applicants was to knock at the door of the consolidation authorities. The finding was reversed in appeal by the Commissioner, who remanded the case for a decision on merits. The Collector then held that the appellant had been forcibly dispossessed from *khasras* Nos. 281, 282 and 749, being a part of the land claimed by him and directed that possession thereof be returned to him. The appellant and respondent No. 1 both went up in appeal to the Commissioner, who held that the former had also been in possession of *khasra* No. 596 as a tenant under respondent No. 1 and directed that he be put back into possession thereof along with that of the three *khasra* numbers mentioned earlier. The matter was agitated by respondent No. 1 before the Financial Commissioner in a petition for revision which was dismissed.

(4) It was then that respondent No. 1 came to this Court on the writ side with a petition under Articles 226 and 227 of the Constitution of India praying that the order of the Financial Commissioner be quashed. Relying upon *Hartej Bahadur Singh* v. *The State of Punjab and others* (1), the learned Single Judge held in the impugned order that the appellant could not avail of the remedy under section 43 of the Act but was bound to knock at the door of the consolidation authorities who could give him the necessary relief in accordance with the provisions of the Consolidation Act. It was urged before him that *Hartej Bahadur Singh's case* (1), (supra) was distinguishable inasmuch as the finding therein was that the consolidation authorities had failed to deliver possession of an erstwhile tenant (that is, a person, who had continued to retain the status of a tenant in possession right up to the time when consolidation work was started in the village in which the land in dispute was situate) while in the present case, according to the averments made by both parties, the appellant had been deprived of the land in dispute before the consolidation proceedings were commenced. The learned Single Judge, however, was of the opinion that there was no distinction between the two cases, both of which

(1) 1964 P.L.R. 751.

were governed according to him, by the ratio in *Hartej Bahadur Singh's case* (1), which he laid down as follows :—

> "* * * * if the landlord is in unauthorised possession of a parcel of land from which he had dispossessed a tenant. the latter can claim ejectment of the landlord from that parcel of land in proceedings under section 43 of the Act. At the same time it has been clearly held that if the land in the possession of the landlord has not been obtained by the landlord by forcible dispossession of the tenant, but from the consolidation authorities, the remedy of a tenant. who was ousted before the delivery of possessions by the consolidation authorities, is not under section 43 of the Act."

(5) He, therefore, allowed the writ petition and set aside the order of the Financial Commissioner along with those orders which it confirmed or upheld and directed that the application filed before the Collector by the appellant under section 43 of the Act would stand dismissed under the order of the Collector, dated the 10th of April. 1961.

(6) Learned counsel for the appellant has contended before us that *Hartej Bahadur Singh's case* (1), (supra) has no application at all to the facts of the present case which are distinguishable and we find ourselves in agreement with him. In that case the finding was, as noted by the learned Single Judge. that the tenant had continued to be in possession of his land till the consolidation authorities took it over and amalgamated it with the other land in the village for purposes of repartition. In this connection the following observations in *Hartej Bahadur Singh's case* (1), are pertinent :

> "In the application filed by the tenant, as already given, the main allegation was that the consolidation authorities had given a new *tak* to the landlord and that the tenant had not been given possession over any part of the land. As stated above, the Collector also came to the same conclusion after taking into consideration this allegation in the application and the evidence on the record. These findings have not been specifically reversed by the higher authorities."

Their Lordships, therefore, proceeded to decide the case on the premises that the tenant sought the remedy under section 43 of the

Act on the ground that he had not been put back into possession of the land which he continued to hold as such till the consolidation authorities intervened in pursuance of their duties under the Consolidation Act and it was held that their failure to comply with the provisions of the Consolidation Act gave rise to a remedy under the Act itself and not outside it. What happened in the present case, on the other hand, was that the tenant ceased to hold possession of the land comprised in his tenancy before the consolidation work started. If he was deprived of his possession forcibly, the provisions of section 43 at once came into play and whether any consolidation work was commenced thereafter or not, the tenant acquired the right as from the date of dispossession to move the Collector under the provisions of that section which runs as follows:

> "43(1) Any person, who is in wrongful or unauthorised possession of any land—
>
> (a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act, or
>
> (b) to the use and occupation of which he is not entitled under the provisions of this Act, may, after summary enquiry, be ejected by the Collector, who may also impose on such person a penalty not exceeding five hundred rupees.
>
> * * * *
> * * * *".

(8) It is not disputed that these provisions do ordinarily come into play in the case of a forcible dispossession of the tenant by the landlord and this is a proposition to which the learned Judges, who decided *Hartej Bahadur Singh's case* (1), (Supra) fully subscribed. They observed :

> "In the present case, if the facts alleged and proved were that after the consolidation proceedings, possession was, in fact, delivered to Sucha Singh, as a tenant over the new land which had been allotted on repartition to Hartej Bahadur Singh in lieu of the land which was with this tenant and that subsequently the tenant was dispossessed, the provisions of section 43 of the Tenancy Act could be directly applicable and this was not disputed."

(9) If this be so, it can also not be disputed that before any consolidation work is commenced in an estate section 43 of the Act would be applicable to the case of a tenant forcibly dispossessed. In this view of the matter the dictum in *Hartej Bahadur Singh's case* (1), (supra) must be taken to be confined to that type of cases wherein a tenant fails to get possession of the land comprised in his tenancy from the consolidation authorities after the repartition; *even though he was in possession thereof right up to the time when those authorities came in the* picture. The dictum would not be applicable to any other case.

(10) This is also the conclusion which follows from the provisions of section 23 of the Consolidation Act on which the said dictum is mainly based. Sub-section (2) of that section lays down that the land-owners and tenants shall be entitled to possession of the holdings and tenancies allotted to them from such date as may be determined by the Consolidation Officer, who shall put them in physical possession of the holdings to which they are so entitled. It is clear that the allotment of a tenancy is a *sine qua non* for any entitlement under sub-section (2) of section 23 and that allotment could, in the very nature of things and in the scheme of the Consolidation Act, be made only in favour of a person, who was either an owner of land or occupied it as a tenant. Although it is not stated in so many words in any part of the Act, a tenant *out of possession* whose title is disputed by the landlord would have no right to an allotment under the Consolidation Act unless the entries in the revenue records supported his claim. The appellant having been dispossessed before the consolidation operations started in the estate, it is reasonable to presume that the *khasra girdawari* prepared by the revenue authorities would cease to mention him as a tenant from then onwards. And if that be so, the consolidation authorities would not recognise any right of allotment in him. It may be noted here that the Consolidation Act does not provide for the settlement of disputes relating to title which lie within the province of the civil courts or of special tribunals authorised for the purpose under various statutes. A claim of the kind now made by the appellant is outside the purview of the Consolidation Act and of the jurisdiction of the Consolidation Officer.

(11) We may here consider certain observations made in *Hartej Bahadur Singh's case* (1), (supra) relied upon by the learned Single Judges:

> "Under the Consolidation Act it is duty of the consolidation authorities to put the land-owners or tenants into possession.

> That is a jurisdiction vested in them. If they put any person into possession, he cannot be said to have been in wrongful or unauthorised possession of the land because it does not fall either under clause (a) or clause (b) of sub-section (1) of section 43 of the Tenancy Act * * * * Mistake, if any, committed by the Consolidation Officer can be got corrected by proceedings under the Consolidation Act, and the Collector cannot, under the provisions of section 43 of the Tenancy Act, seek to correct the mistakes of, and undo the acts performed by the consolidation authorities."

(12) These observations, if we may say so with respect, are unexceptionable in so far as they go; but they do not mean that a person, who had some sort of a title to a particular piece of land before the consolidation proceedings were commenced has no remedy except by way of an appeal to the consolidation authorities. If it were otherwise, while the consolidation authorities would not recognise a title unsupported by revenue records, the person claiming it would be faced with a situation that the possession of his adversary is neither wrongful nor unauthorised. All that the observations mean is that where a remedy is available to any person within the frame-work of the Consolidation Act, that is the remedy which he must pursue in which case he cannot take advantage of the provisions of section 43 of the Act. As held above by us, the remedy under the Consolidation Act is not open to the appellant for the simple reason that he was an ousted tenant before the consolidation operations started and such a tenant has no status under the Consolidation Act.

(13) It was contended before us on behalf of respondent No. 1, that the decision given by the Collector on facts to the effect that the appellant had been forcibly dispossessed from the land comprised in his tenancy was erroneous and should be set aside. The contention has no force in view of the provisions of sections 43 and 47 of the Act which vest the Collector with exclusive jurisdiction in the matter.

(14) We hold, in the result, that *Hartej Bahadur Singh's case* (1). is clearly distinguishable and that the Financial Commissioner's order, dated the 20th of April, 1963, does not suffer from the infirmity on the basis of which it was struck down by the learned Single Judge. Accordingly, we accept the appeal, set aside the impugned order and

dismiss respondent No. 1's petition under Articles 226 and 227 of the Constitution of India.

(15) In view of the intricate law point involved, there will be no order as to costs.

MAHAJAN, J.—I agree.

R.N.M.

FULL BENCH

Before Prem Chand Pandit, Bal Raj Tuli and S. S. Sandhawalia, JJ.

GURDIAL SINGH,—*Appellant.*

versus.

BALWINDER SINGH AND OTHERS—*Respondents.*

Taxing Case re :—

Regular Second Appeal No. 1636 of 1970.

September 25, 1970.

Court Fees Act (VII of 1870)—Sections 7(iv)(c) and 7(v)—Land suits covered under section 7(iv)(c)—Plaintiff giving one value for purposes of Court-fee and another for jurisdiction—Value for Court-fee—Whether to be taken for jurisdiction as well—Court-fee—Whether to be paid at ten times the land revenue.

Held, that if a suit falls under section 7(iv) (c) of Court Fees Act, 1870, and one value is given for purposes of court-fee and another for jurisdiction, it is the value for purposes of Court-fees which has to be taken as the one for jurisdiction as well. The plaintiff cannot be compelled to adopt the jurisdiction value as value for purposes of court-fee and he has to be given the option to fix his own value. The amount at which he values the relief sought for purposes of Court-fees, determines the value for jurisdiction and not vice-versa. Hence in land suits covered by section 7(iv)(c) of the Act, the court-fee has to be paid at ten times the land revenue assessed on the land and not at thirty times. (Para 3).

Regular Second Appeal from the decree of the Court of Shri J. S. Chatha, Additional District Judge, Amritsar dated 13th July, 1970 reversing that of Shri H. S. Ahluwalia, Sub-Judge, Ist Class Ajnala dated 6th May, 1968 and decreeing the plaintiff's suit for possession of 5/11th share of the sum of Rs. 6,100 retained as charge on the property to the vendee.

ATMA RAM, ADVOCATE, for the appellant.

H. L. SIBAL, ADVOCATE-GENERAL (PUNJAB) WITH I. S. TIWANA, ASSISTANT ADVOCATE-GENERAL, for the respondents.