of considerable size with four or five thousand inhabitants. Moreover it was proved from their statements that they had frequently given evidence for the police. Even the learned Magistrate remarked that it was amply established that these witnesses were the stock witnesses of the police, but he went on to say that that only meant that their evidence was to be weighed with caution and care and not to be rejected outright, a view to which in my opinion no exception can be taken. However, I should have thought that in the present case it should not have been impossible for the police to obtain some better witnesses from a place of the size of Khalra. What is more serious in the present case is that in my opinion the use of section 27 of the Evidence Act for the purpose of introducing a so-called disclosure statement becomes meaningless and almost farcical, since it is quite obvious that the opium was not in a place of concealment at all and could have been found by the most perfunctory search by a police officer. A disclosure statement in my opinion only has any meaning at all if the place where the incriminating article was recovered is really a place of concealment which it would be difficult or impossible for the police to discover without some assistance from the accused, and when stock witnesses are brought in to support a meaningless disclosure statement of this kind I am of the opinion that no weight can be attached to it. This means that the opium was discovered in a place to which, according to the defence evidence, at least four persons had access as inhabitants of the house, and without the so-called disclosure statement there could be no question of exclusive possession by any member of the household. On this ground I regard the case as not conclusively established against the petitioner and I accordingly accept the petition and acquit him. His bail bond will be cancelled.

*B.R.T.*

APPELLATE CIVIL

*Before A. N. Grover and Jindra Lal, JJ.*

RAM LABHAYA,—*Appellant*

*versus*

THE MUNICIPAL COMMITTEE, AMRITSAR,—*Respondent*

**Regular First Appeal No. 313 of 1957**

1965

September 20th.

*Limitation Act (IX of 1908)—Articles 62 and 97—Contract Act (IX of 1872)—S. 65—Contract entered into and parties performing their obligations under it for some time—Contract discovered to be*

*void later on—Suit for return of money received under the void contract—Whether governed by Article 62 or 97—Terminus a quo for such suit—Whether the date of the agreement.*

*Held,* that ordinarily the time of discovery of the void nature of the agreement with reference to section 65 of the Contract Act would be the date of the agreement as the parties must be presumed to know the law. However special circumstances may be established which may take the case out of the ordinary rule and there may be no failure of consideration at the very beginning as the parties may carry out their respective obligations for some time and the failure of consideration may occur at a subsequent date. In that case limitation would run from the later date and not the date of the contract.

*Held* that, if at the time of the contract there is no failure of consideration and the parties continue to perform their obligations under it for some time, and contract is discovered to be void later on, it is Article 97 of the Limitation Act, 1908, which will be applicable to a suit for the return of money received under the contract. The existence of special circumstances has a material effect on the starting point of limitation. When obligations have been performed by the parties under an agreement which is void, that is a clear instance where special circumstances exist for taking the case out of the ordinary rule that time must begin to run from the date of an agreement which is void in its inception. In such a case the limitation would run from the date the agreement is discovered to be void and not from the date of the agreement.

*First Appeal from the decree of the Court of Shri Chander Gupt Suri, Senior Sub-Judge, Amritsar, dated the 12th August, 1957, dismissing the plaintiff's suit with costs.*

F. C. MITTAL, K. L. KAPUR AND VINOD KUMAR, ADVOCATES, for the Appellant.

RUP CHAND AND SUBHASH CHANDER, ADVOCATES, for the Respondent.

JUDGMENT

The judgment of the Court was delivered by —

Grover, J.

GROVER, J.—This is an appeal from a decree dismissing the suit of the plaintiff for recovery of a sum of Rs. 5,058 mainly on the ground that the claim was barred by limitation.

In the year 1952, the defendant Municipal Committee published a notice regarding the holding of a public auction on 24th April, 1952, for a contract for supply of grams and

other foodgrains during the period 1st May, 1952 to 31st March, 1953. The plaintiff was the only bidder at the public auction and by a resolution, dated 24th April, 1952, the Committee accepted his offer contained in his letter dated 26/27th March, 1952. The grams were to be supplied at the control rate of Rs. 12 per *maund* and in addition, 0-12-3 per maund were payable as transportation and grinding charges. The plaintiff was required to give security and by a letter, dated 8th July, 1952, Exhibit D. 6, the Committee was informed that a sum of Rs. 2,535 had been actually deposited on that account and that the remaining half was to be adjusted against the bills to be submitted by the plaintiff for the supply of goods. An agreement, Exhibit D. 7, was executed on 8th July, 1952, in which the terms and conditions were fully set out. It is common ground that the supplies of grams were made from May to August, 1952. According to the plaintiff, the aforesaid commodity was decontrolled and, therefore, the prices shot up in August and for that reason the plaintiff stopped making further supplies at the agreed rates. On 8th September, 1952, the Medical Officer of Health sent a notice to the plaintiff saying that the supplies of 300 *maunds* had not been made and an equivalent quantity was being arranged from the local market which would be on his account and at his risk and responsibility. It is unnecessary to refer to the subsequent correspondence between the parties. On 8th November, 1954, the Municipal Committee filed a suit for recovery of Rs. 11,309 odd from the plaintiff for damages for alleged breach of contract. The total amount of deposit amounting to Rs. 4,080 which had been made by the plaintiff by way of security was treated as having been forfeited to the Committee under the terms of the agreement, dated 8th July, 1952. This suit was dismissed on 29th August, 1955, on the ground that the agreement of 8th July, 1952, was not enforceable at law and was null and void. The present suit was filed on 21st June, 1956, for recovery of the sum of Rs. 4,080 which had been deposited by the plaintiff by way of security and Rs. 978 as interest on that amount, the total claim being for Rs. 5,058.

It has been alleged in the plaint that the forfeiture by the defendant Committee of the aforesaid deposit was illegal and could not have been validly made under the terms of the agreement which was void. The deposit continued to remain as a security and the plaintiff was entitled

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to its refund. As regards limitation, it was pleaded that it was on 29th August, 1955, when the judgment was pronounced in the suit filed by the defendant Committee that the purpose of deposit came to an end and till then any demand of the same could not be made as it was being treated as having been forfeited. The cause of action, therefore, accrued on 23rd December, 1955, when for the first time demand was made (by a notice). In this notice interest was also claimed at the rate of 6 per cent per annum by way of damages. Apart from other defences, the Committee pleaded the bar of limitation.

The trial Court framed the following issues:—

(1) Whether the suit is within time?
(2) Whether the plaintiff is estopped by his conduct from filing the present suit?
(3) Whether the defendant can forfeit the security amount ?

Issue No. 1 was decided against the plaintiff. The second issue was not pressed and on the third issue it was found that the plaintiff would have been entitled to the restitution of the amount of the security deposit in view of the provisions of section 65 of the Indian Contract Act. The question of interest was not put into issue and does not appear to have been either pressed or decided.

In the present appeal the main point for consideration is whether the suit was barred by limitation. The trial Court was of the view that article 62 of the Indian Limitation Act, 1908 (hereinafter called the Act) would be applicable and the period of limitation would be three years from the date on which the money was received by the defendant Committee in the absence of any special circumstances. As no such circumstances had been proved by the plaintiff, the claim was barred. Mr. K. L. Kapur contends that the present case is governed by article 97 of the Act and not article 62. In the alternative, the *terminus a quo* would be the date of the judgment in the suit filed by the Municipal Committee owing to the existence of special circumstances. At any rate, the limitation would commence to run from the date when the plaintiff had knowledge during the pendency of the suit filed by the defendant Committee that the agreement was void.

It is necessary to first advert to certain material facts and circumstances on which Mr. Kapur relies. As stated before, the agreement, Exhibit D. 7, was executed on 8th July, 1952. It was acted upon from May to August, 1952, during which supplies were duly made in accordance with the agreement. The Committee even deducted the balance of the amount of security deposit from the amount which became due to the plaintiff on account of these supplies. The Committee filed a suit on 8th November, 1954, on the basis of the agreement treating it as perfectly valid and legal. It is abundantly clear from Exhibit P. 6, the judgment in that suit, that the plaintiff raised the question of the validity of the agreement for the first time in his defence. It was held by the Court that non-affixation of the Committee's seal on the agreement made it wholly void and unenforceable by reason of non-compliance with the mandatory provisions of section 47 of the Punjab Municipal Act, 1911.

Now, section 65 of the Indian Contract Act provides that when an agreement is discovered to be void, or when a contract becomes void, any person, who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it. It is not disputed that the claim of the plaintiff is based on section 65 and it has, therefore, to be determined which article of the Limitation Act will be applicable to the facts of the present case. A large volume of case-law has been cited by the learned counsel for the parties but, in my opinion, it is futile to examine all the cases on which reliance has been placed. The views that have been expressed show a great deal of divergence. I propose to refer mainly to those cases which are directly in point. The view of the Punjab Chief Court is contained in a decision in *Buta Ram* v. *Gurdas* (1), in which it was said that if the contract of sale between two parties was void *ab initio*, the suit brought by the vendee against the vendor for a refund of the purchase price was governed by article 62 and not by article 97. The Lahore Court in *Kilkha Singh* v. *Fazal Din* (2), held that where a plaintiff, who had advanced money on a mortgage, repudiated it himself and filed a suit for the money paid, such a suit was not a suit for compensation for breach of contract and was governed either by article 62 or article 97, according as to

(1) 44 P.R. 1918.
(2) A.I.R. 1933 Lah. 581.

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whether the contract was void or voidable. In either case the period of limitation was three years and the suit would be barred. In *Labh Singh* v. *Court of Wards Estate of S. Buta Singh* (3), certain property had been put up for sale by auction on two occasions. The highest bid was by one L who put down certain amounts in part payment. The sale, however, fell through as L failed to complete his part of the bargain. He filed a suit for the return of the money paid by him towards the purchase price. Beckett J., delivering the judgment of the Bench, felt that there was considerable difficulty in deciding whether article 62 or article 115 applied to the case where the claim was that there had been no forfieture of the money and the plaintiff was suing for the return of the purchase price paid on a contract which had become void through no fault of his. The Court considered it safer to give a wide construction to the word "compensation" in article 115, rather than to put a somewhat artificial construction upon the word "received" in article 62. Another Bench consisting of Harries C. J., and Mahajan J. (as he then was) in *Punjab Government* v. *L. Baij Nath* (4), decided a case in which the plaintiffs had sued the Punjab Government for recovery of Rs. 2,100 on the ground that certain property had been purchased at an auction sale conducted under the provisions of the Punjab Land Revenue Act, but the purchasers had been deprived of their property because it did not belong to the person on whose account it had been sold. The suit was decreed for Rs. 1,679-9-0. The purchase price which had been paid, was Rs. 1,300. The amount decreed included the purchase money as also the incidental costs which the plaintiffs claimed to have incurred on the property. The Government had taken up the position that article 62 applied. The Courts below had held that the suit was governed by article 97 as there was a total failure of consideration when the plaintiffs lost possession of the property conveyed to them and the *terminus a quo* was the date on which they lost possession. In the High Court the learned counsel for the Government relied on article 96 also. The applicability of articles 96 and 62 was ruled out and it was held that the case was governed by Article 97, the *terminus a quo* being the date of dispossession. The reasons which weighed with the Court were mainly these. Though the sale was a void one, yet the possession of the

(3) A.I.R. 1945 Lah. 210.
(4) A.I.R. 1945 Lah. 164.

property was delivered by the Government to the purchasers and under the void sale the purchasers remained in possession from the date of auction in 1927 to October, 1936. The money was, therefore, paid to the Government and consideration for the payment of that money existed in the enjoyment of the property sold to the purchasers. The consideration failed only on 22nd October, 1936 and, therefore, where consideration existed at the initial stage even though the contract was void and that consideration failed to exist at a later date, it would be article 97 which would be applicable. The argument of the counsel for the Government that the sale being *void ab initio* the price paid must be treated as money received by the Government for the plaintiffs' use, was repelled. Dealing with the further argument that there was a distinction between contract which was voidable and which was void it was observed—

> "It is no doubt true that in the case of a voidable contract the transaction is good till it is avoided and that in the case of a void contract the transaction is bad from its very inception, but this distinction does not warrant the contention that when the contract is void at its very inception then the price paid by the purchaser is retained by the seller for the "use of the purchaser".

So far as this Court is concerned, the first decision brought to our notice is of Teja Singh and Achhru Ram, JJ., in *Amolak Chand-Mewa Ram* v. *Mohammad Shafi* (5), in which a purchaser at an auction sale had to part with possession of the property purchased by him by reason of the paramount title of another claimant, it being found that the judgment-debtor had no saleable interest in the property. In a suit by the purchaser it was held by this Court that article 120 applied and not article 62. According to the observations made, it is necessary, in order to attract the applicability of article 62, that the defendant should when receiving money intend to pay to the plaintiff. The article has been applied even in cases where the money was received by the defendant under an adverse and hostile claim, but the application of the article has never been extended to cases in which the original receipt of the money by the defendant could

(5) I.L.R. 1948 Punj. 302=A.I.R. 1948 East Pb. 1.

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not be deemed to be either in fact or by operation of law as a receipt on behalf of or for the use of the plaintiff. In other words, the article has never been applied to cases in which by reason of some subsequent events the money which was initially paid to the defendant for his own use was to be regarded as in law money received by him for the plaintiff's use. In *The Municipal Committee, Amritsar* v. *Amar Dass* (6), Kapur J. (as he then was), held that article 62 would be applicable to a suit against a Municipality for recovery of municipal tax wrongfully levied by it. The earlier case of *Amolak Chand-Mewa Ram* v. *Mohammad Shafi* (5) was distinguished on facts and reliance was placed on the observations of Mookerjee J., in *Mahomed Wahib* v. *Mahomed Ameer* (7), pointing to the well-known English action in the form incorporated in article 62, namely, a suit for money received by the defendant for the plaintiff's use; consequently the article was applicable wherever the defendant had received money which in justice and equity belonged to the plaintiff under circumstances which in law rendered the receipt by the defendant to the use of the plaintiff.

Mr. Kapur has relied on the decision in *Punjab Government* v. *L. Baij Nath* (4), and Mr. Rup Chand, who appears for the Committee, has naturally sought to derive support from those cases in which article 62 was applied. It is, however, noteworthy that the facts in the decisions referred to were different and distinguishable from the facts of the present case.

To my mind, the law which has been laid down by the Privy Council affords, with respect, good guidance on the question of principle governing the decision of cases of the present type. In *Hanuman Kamat* v. *Hanuman Mandur* (8), a member of a joint Hindu family (Mithila) effected a sale. After purchase money had been paid, the sale went off upon the objection made by other co-sharers. Their Lordships were of opinion that the case must fall either within article 62, or article 97, but in view of the fact that the sale was not necessarily void, but only voidable, the consideration could not be held to have failed at once and thus there was a failure of consideration which furnished

(6) A.I.R. 1953 Punj. 99.
(7) I.L.R. 32 Cal. 527.
(8) I.L.R. 19 Cal. 123.

a cause of auction at the time of such failure. The case appeared to their Lordships to be within the ambit of article 97. In *Juscurn Boid* v. *Pirthichand Lal Choudhury* (9), the sale was held to be totally ineffectual and it was observed by their Lordships that where the suit was for recovery of the purchase price paid and for other reliefs as arrears of rent and expenses of sale, article 62 would apply, but in spite of these observations their Lordships proceeded to decide the case as if article 97 applied. In *Thakurain Harnath Kuar* v. *Thakur Indar Bahadur Singh* (10), the suit was for possession of certain property with an alternative prayer for payment of money, which purported to have been transferred by sale. It had been found that the transfer was inoperative as the transferor had no interest capable of transfer but merely an expectancy. Referring to section 65 of the Contract Act, it was observed—

> "An agreement, therefore, discovered to be void is one discovered to be not enforceable by law, and, on the language of the section, would include an agreement that was void in that sense from its inception as distinct from a contract that becomes void."

It was held that the agreement was manifestly void from its inception because its subject-matter was incapable of being transferred. Their Lordships proceeded to consider the material from which it could be fairly inferred in the peculiar circumstances of the case that there was a misapprehension as to the private rights of the transferor which he purported to sell and that the true nature of those rights was not discovered by the plaintiff earlier than the time at which his demand for possession was resisted. The suit was held to be within limitation and was decreed in the sum of Rs. 25,000 which had been paid as purchase price together with interest although the relief relating to recovery of possession was refused. In *Annada Mohan Roy* v. *Gour Mohan Mullick* (11), the law laid down in *Thakurain Harnath Kuar's case* was reaffirmed, but the appellant was not allowed to raise the issue, which had been abandoned in the trial Court about establishing the existence of any

(9) I.L.R. 46 Cal. 670.
(10) A.I.R. 1922 P.C. 403.
(11) A.I.R. 1923 P.C. 189.

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special circumstances which took the case out of the ordinary rule, that the time of discovery of the illegality of the contract would be the date when the contract was made as the parties must be presumed to know the law. *In Ma Hnit* v. *Fatima Bibi* (12), a sum of Rs. 10,000 was advanced by M.H. and her husband U.P.Y. to F.B., the aunt of a minor, who effected a mortgage of his property alleging herself to be his gaurdian. In 1913 M.H. and U.P.Y. sued the minor and his aunt as also her husband for the principal and interest due on the mortgage. This suit was decreed and the property was put to sale and purchased by one M.T., who afterwards resold it to M.H. and U.P.Y., who got possession of the same. In 1915 the minor, by his father, as next friend, filed a suit against M.H. and U.P.Y., etc., who had purchased the property for possession on the ground that this aunt was not legally his guardian and had no authority to mortgage his property. That suit was decreed in 1918. In 1919 U.P.Y. having died, M.H. brought a suit against F.B., etc., on the ground that she had received the money and as it could not be recovered from the minor, she along with other defendants was liable to repay it with interest. On the question of limitation it was contended before their Lordships for the respondents that there never was any consideration for the loan of the sum of Rs. 10,000 then advanced by M.H. and her husband U.P.Y.:—as the respondents at that time had no interest or property in the subject-matter of the mortgage. Thus it was contended there was a complete absence or failure of consideration at and from the very moment when the money was advanced. If this contention were to be accepted, the claim was undoubtedly barred by time. Their Lordships observed—

> "But should the true date of the failure of the consideration for the loan of the money be the day on which the appellate Court made a decree in favour of Ali Hashim Mehter (the minor) setting aside the mortgage, and giving him possession of the mortgaged property, i.e., 11th March, 1918, then this suit would be well within the three years allowed for taking proceedings to recover the Rs. 10,000 with interest, for the loan of them. In the opinion of their Lordships this contention of the appellant is well founded. It was proved that respondent and her husband did for some

(12) A.I.R. 1927 P.C. 99.

time pay to the appellant and her husband the interest agreed by them to be payable on the money lent. Default in this respect having been made, appellant and her husband, on 5th February, 1913, took proceedings, claiming the principal and interest as due from the respondents, who made written admission of the debt. On 8th July, 1913, a decree in favour of appellant was made, and by virtue of it the property was sold by auction in order to pay the money then due to appellant and her husband. * * *

From these facts it appears that the appellant and her husband were, from the date of the loan (6th August, 1907) down to 11th March, 1918, not entitled to allege that they had not received any consideration, for the loan that they had made—since for a considerable time they had actually received interest upon it, paid to them by the respondents."

After setting out further facts, their Lordships said that there was at the time of the loan no failure of consideration upon which the loan of the money and the promise to repay with interest was made since the obligation of that promise was for some time observed and, therefore, the failure of consideration for the loan of the money did not occur until 11th March, 1918. In *Hansraj Gupta* Vs. *Dehra Dun-Mussoorie Electric Tramway Co. Ltd.* (13), the real question involved related to the meaning of the Explanation to section 3 of the Limitation Act in respect of a claim against a company (in liquidation) and also about the provisions of section 186 of the Companies Act, 1913. It was, however, observed at page 66 that in the absence of special circumstances the time at which an agreement was discovered to be void within the meaning of section 65 would be the date of the agreement. The facts in *Babu Raja Mohan Manucha v.* Babu Manzoor (14), were that a mortgage of a property had been effected which was under the control of the Collector under Schedule 3, para 11, of the Code of Civil Procedure. For 10 years payments of interest were made. A suit was filed on the foot of the mortgage, the reliefs sought being both by sale of mortgaged property and by

(13) A.I.R. 1933 P.C. 63.
(14) A.I.R. 1943 P.C. 29.

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enforcement of the personal covenant. The suit was resisted on the ground that the mortgage was void having been made in circumstances which brought into operation para. 11 of Schedule 3. Upholding that contention their Lordships expressed the view that in the special circumstances of that case where security was not discovered to be void until after the suit instituted upon the mortgage, the lender was entitled to relief on the principle that where a defendant who when sued for money lent pleaded that the contract was void could hardly regard with surprise a demand that he should restore what he had received thereunder. Consequently no question of limitation could arise since the circumstances giving rise to the right of the plaintiffs to rescind did not come to their knowledge until after action brought.

The principles which are deducible from the above decisions of the Privy Council may be stated thus:

(1) Ordinarily the time of discovery of the void nature of the agreement with reference to section 65 of the Contract Act would be the date of the agreement as the parties must be presumed to know the law.

(2) However, special circumstances may be established which may take the case out of the ordinary rule and there may be no failure of consideration at the very beginning as the parties may carry out their respective obligations for some time and the failure of consideration may occur at a subsequent date. In that case limitation would run from the later date and not the date of the contract.

Logically article 62 would be applicable where the agreement was void in its inception, the *terminus a quo* being the date on which it was made but even to a case of that type their Lordships applied article 97 and not article 62,—*vide Juscurn Boid* v. *Pirthichand Lal Choudhury* (9), Article 97 was applied in *Thakurain Harnath Kaur* v. *Thakar Indar Bahadur Singh* (10) *and Ma Hnit* v. *Fatima Bibi* (12) as also presumably in *Babu Raja Mohan Manucha* v. *Babu Manzoor* (14). The same article was applied in the Bench decision of the Lahore Court in *Punjab Government* v. *L.*

*Baij Nath* (4). The essence of the matter, therefore, is that if at the time of the agreement, there is no failure of consideration and the parties continue to perform their obligations under it for some time, it is article 97 which would be applicable. The rule that the existence of special circumstances would have a material effect on the starting point of limitation has been accepted in all the decisions of the Privy Council and it seems to me that when obligations have been performed by the parties under an agreement which is void, that is a clear instance where special circumstances exist or have been proved for taking the case out of the ordinary rule that time must begin to run from the date of the agreement which is void in its inception.

The Court below has relied on *Gulam Husain* v. *Mir Jakirali* (15), in which it was held that when a transfer was void owing to a provision of law the cause of action to recover the consideration under section 65 of the Contract Act would arise in the absence of special circumstances from the date of the agreement. Reliance was placed in that case on *Annada Mohan Roy* v. *Gour Mohan Mullick* (11) and *Hans Raj Gupta* v. *Dehra Dun-Mussoorie Electric Tramway Co. Ltd.* (13). *The decision in Thakurain Harnath Kaur* v. *Thakur Indar Bahadur Singh* (10), was distinguished on the ground that the mode of approach in that case could not be regarded as correct owing to the two later decisions. That distinction, however, with respect, is not justified as the decision in *Thakurain Harnath Kaur* v. *Thakur Indar Bahadur Singh* (10) was apparently based on the existence of the special circumstances which obtained in that case which took it out of the ordinary rule. Even in the later decisions no discordant note was struck and because no special circumstances had been established, it was held that limitation commenced from the date of the agreement. The trial Court conceded that the date of discovery of the void nature of the agreement must be taken to be the date on which it was entered into unless the plaintiff could make out any special circumstances. It proceeded to consider the facts of the present case and came to the conclusion that no such special circumstanes had been established which would take it out of the ordinary rule. The error into which the trial Court fell was that it did not properly appreciate the principles laid down by the Privy Council

(15) A.I.R. 1939 Nag. 27.

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nor did it consider the other decisions, in particular *Ma Hnit* v. *Fatima Bibi* (12), the ratio of which has already been set out and which has been very strongly invoked by Mr. Kapur on behalf of the plaintiff. It appears to me that the article, which would be really applicable to the present case is 97. Admittedly there was no failure of consideration at the very inception because the agreement though void owing to a technical defect was nevertheless acted upon for a certain period. Even up to November, 1954, the defendant Committee treated it as valid and filed a suit on its basis against the plaintiff. It was only during the pendency of that suit that the question of its validity was mooted and it was held by the judgment, dated 29th August, 1955, that it was void for want of non-compliance with the provisions of section 47 of the Municipal Act. The present case, therefore, fails within the same category as *Punjab Government* v. *L. Baij Nath* (4), *Thakurain Harnath Kaur* v. *Thakur Indar Bahadur Singh* (10) *and Ma Hnit* v. *Fatima Bibi* (12). In that view of the matter admittedly the claim of the plaintiff could not be held to be barred by time.

It may be mentioned that Mr. Rup Chand, for the defendant Committee relied on a number of cases which have no direct bearing on the point in controversy before us. By way of instance, a Bench decision in *Jain Brothers and Company* v. *The State of Rajasthan* (16), may be referred to. There, the question was whether article 62 would govern a suit for refund of sales tax which had been recovered by the State illegally and without any authority of law. Apart from other decisions, the Rajasthan Court relied on *The Municipal Committee, Amritsar* v. *Amar Dass* (6), and came to the conclusion that where a refund was claimed of money which had been recoverd by the State without authority of law it could be rightly predicated of such a case that the amount in question was immediately returnable, i.e., at the very time of receipt and, therefore, the defendant should be held to have received it in law for the plaintiff's use. This case is altogether of a different type for the simple reason that there was no contract or agreement between the parties which was discovered to be void nor was the claim made under section 65 of the Contract Act.

Mr. Kapur has pressed for acceptance of the plaintiff's claim for payment of interest on the principal amount. It

(16) A.I.R. 1964 Raj. 17.

appears that in the trial Court the question of interest was not agitated nor does it find any mention in the grounds of appeal. Consequently it cannot be entertained at this stage.

In the result, the appeal is allowed and the decree of the Court below is set aside. The plaintiff is hereby granted a decree in the sum of Rs. 4,080. Keeping in view the difficult nature of the points involved, the parties are left to bear their own costs throughout.

*K.S.K.*

LETTERS PATENT APPEAL.

*Before D. Falshaw, Chief Justice and Mehar Singh, J.*

RAMA NAND,—*Appellant.*

*versus*

JIWAN DASS AND OTHERS,—*Respondents.*

**Letters Patent Appeal No. 14 of 1962.**

**1965**

September, 22nd.

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 3—Notification exempting buildings constructed during certain years from the brovisions of the Act—Whether applies to buildings constructed by the landlords alone—Tenant constructing a building on a part of vacant land leased out to him—Whether governed by the provisions of the Act as regards ejectment.*

*Held*, that the notification issued under section 3 of the East Punjab Urban Rent Restriction Act, 1949, by the Governor exempting buildings constructed during certain years from the provisions of the Act for a period of five years from the dates of their completion applies to buildings constructed by the landlords and has no application to a construction made by the tenant of his own in defiance of the landlord. If the landlord wishes to eject his tenant from the building leased out to him as well as the building constructed by him on a part of the vacant land included in his lease, he must have recourse to the provisions of the said Act and a suit for ejectment of the tenant from such a building is not competent in a civil Court.

*Letter Patent Appeal under Clause 10 of the Letters Patent from the judgment and decree of the Hon'ble Mr. Justice Harbans Singh passed in S.A.O. No. 62 of 1959 dated 5th September, 1961.*

SHAMAIR CHAND AND PARKASH CHAND, ADVOCATES, for the Appellant.

G. P. JAIN AND S. S. MAHAJAN, ADVOCATES, for the Respondents.