the present petition. On this fact Mr. Sachar has argued that the petitioners were obviously guilty of laches and no explanation is coming forth for the same. Mr. Gandhi in reply has placed reliance on *Mrs. H. M. Dhillon* v. *The State of Punjab and another* (10), but the facts of that case were wholly distinguishable. The petitioner in that case was a Government servant whose prospects of promotion, selection to the higher grades were being affected by the impugned order and in that case it was held that it was open to her to seek the reliefs agitated therein. Obviously the facts are entirely different in the present petition. We are, therefore, of the view that the arbitrator in giving the award was not lacking inherent jurisdiction; that the petitioners willingly participated and whilst submitting themselves to the jurisdiction of the arbitrator invited a decision on merits; that no such objection as to the jurisdiction of the arbitrator was raised before him and that the petitioners have also not been vigilant in the prosecution of their rights.

(21) In view of the above, we are of the opinion that the petitioners have disentitled themselves to the reliefs they seek in the extraordinary jurisdiction of this Court undre Article 226 of the Constitution of India. This writ petition, therefore, fails but in the circumstances of the case there will be no order as to costs.

R. S. NARULA, J.—I agree.

R.N.M.

APPELLATE CIVIL

Before Sodhi, J.

KHAZAN SINGH AND ANOTHER,—*Appellants.*

versus

DALIP SINGH AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 304 of 1959.

October 3, 1968.

Punjab Security of Land Tenures Act (X of 1953)—Section 18—Examination of the claim of tenants under—Exercise of jurisdiction by the Assistant Collector—Whether depends on the existence of any particular state of facts—Decision given by the Assistant Collector—Whether amenable to judicial review.

(10). 1966 Cur. L.J. (Pb.) 678.

Held, that it is nowhere provided in the Punjab Security of Land Tenure Act, 1953, that the exercise of jurisdiction by the Assistant Collector or any other authority for the purpose of examining the claim of tenants under section 18 of the Act will depend on the existence of any particular state of facts. Matters referred to in sub-section (1) of section 18 of the Act do not constitute conditions precedent to the exercise of jurisdiction by the tribunals under the Act. These matters cannot, by any stretch of imagination, be treated as facts which the Assistant Collector has first to determine in order to come to the conclusion whether he has jurisdiction to proceed under section 18 of the Act or not. Any decision given by him on these matters, whether right or wrong, will be within his jurisdiction and not amenable to judicial review in a civil Court. **(Para 4)**

Second Appeal from the decree of the Court of the District Judge, Rohtak, dated the 20th day of February, 1959, reversing that of the Sub-Judge, 1st Class, Rohtak, dated the 17th July, 1958 and dismissing the plaintiffs' suit.

GANGA PARSHAD JAIN AND G. C. GARG, ADVOCATES, for the Appellants.

M. M. PUNCHHI, ADVOCATE, for the Respondents.

JUDGMENT

SODHI, J.—This Regular Second Appeal arises out of the following facts.

(1) Khazan Singh and Jage, plaintiffs appellants were the owners of agricultural land measuring 16 Bighas 3 Biswas represented by Khasra Nos. 5901, 5902 and 4214 situate in village Mokhra Kheri Rojh, Tehsil Gohana, District Rohtak. Dalip Singh and Bhalle defendants respondents claimed that they were the tenants under the plaintiffs and made an application under section 18(2) of the Punjab Security of Land Tenures Act, hereinafter called the Act, to the Assistant Collector expressing their desire to purchase the said land. It was alleged by them that they were the tenants in possession and it was not the reserved area of landlords. The Assistant Collector after hearing the objections of the plaintiffs landlords directed that Khasra Nos. 5901/3595-96 and 4214 would be deemed to have been purchased by Dalip Singh and Bhalle defendants from Jage plaintiff for Rs. 1,450 and Khasra Nos. 5902/3592—3594 etc. from Khazan Singh plaintiff for Rs. 2,100. A dispute was raised before the Assistant Collector as to whether the defendants tenants had been in continuous possession of the land comprised in the tenancy for a minimum period of six years on the date of application which had been made on 2nd January, 1956, as envisaged in section 18 of the Act. The

Assistant Collector after considering the Khasra Girdawaris and appreciation of the material before him came to the conclusion that the defendants did satisfy the necessary conditions inasmuch as that they were tenants in possession for more than six years and not tenants on any reserved area. It was not suggested that the plaintiffs landlords were small landlowners. An appeal was filed by the landlords before the Collector, which was dismissed on 27th September, 1956 and the revision petition before the Commissioner also met with the same fate on 4th February, 1957. The order of the Commissioner is exhibit D. 1, on the record of this case. All the authorities acting under the Act found in favour of the defendants tenants and agreeing with the findings of the Assistant Collector held that the tenants were entitled to purchase the land in excess of the permissible reserved area of the landlords. The landlords Khazan Singh and Jage having failed before the revenue authorities filed a suit on 9th November, 1957, for a declaration to the effect that the order passed by the Assistant Collector on 31st July, 1956 was illegal, void and ineffective as against the rights of ownership of the plaintiffs landlords and also prayed for injunction restraining the defendants tenants from interfering with the possession of the landlords over five Bighas Pukhta of the land comprised in Khasra No. 5902 which, according to the landlords, was not in the possession of the defendants.

(2) The defendants denied the allegations and pleaded that they were in lawful possession of the suit land as tenants and entitled to purchase the same under section 18 of the Act. An objection as to the jurisdiction of the civil Court was also raised and on the pleadings of the parties, the following issues were framed—

(1) Whether the order of the revenue officer is without jurisdiction and bad in law ?

(2) Whether the civil Court has jurisdiction to try the suit ?

(3) Whether the present suit is barred by rule of estoppel?

(4) Whether the act in question is *ultra vires* of the Constitution?

(5) Relief.

Issue No. 1 was decided by the trial Court in favour of the plaintiffs. Under issue No. 2, it was held that since the revenue officer did not proceed in accordance with the provisions of the Act he could not confer any ownership rights on the defendants and that civil Court

had jurisdiction to try the suit which, according to the trial Court, was not barred under section 25 of the Act. Issue No. 3 was decided against the defendants inasmuch as no evidence was produced by them to justify any plea of estoppel against the plaintiffs. In view of the Full Bench judgment of this Court reported in *Bhagirath* v. *The State of Punjab* (1), constitutionality of the Act could not be challenged and on the basis of the findings on issues Nos. 1 to 4, the suit was decreed.

(3) The defendants preferred an appeal before the District Judge, Rohtak, who allowed the same and dismissed the suit of the plaintiffs holding that the civil Court had no jurisdiction to entertain such a suit which was barred by section 25 of the Act. The District Judge was of the view that it was not open to the trial Court to grant a decree quashing the order of the Assistant Collector on the ground that the decision was wrong when it had not been shown that the Assistant Collector acted without jurisdiction. Hence the present second appeal.

(4) Mr. Ganga Parshad Jain, learned counsel for the appellants, subinits that the jurisdiction of the Assistant Collector and higher revenue authorities in permitting the plaintiffs appelants to purchase the suit land under section 18 of the Act depended upon various conditions, one of them being that the tenants should have been in actual physical possession of the land for a period of six years preceding the date of the application and that by giving a wrong decision on any one of such jurisdictional facts, the Assistant Collector could not assume jurisdiction. The submission is that when a wrong finding is given on any jurisdictional fact the order of the authority cannot be said to have been passed under the Act so as to take away the jurisdiction of the civil Court under section 25 thereof. I am afraid there is no merit in this contention. What are being described as conditions precedent to the exercise of jurisdiction or jurisdictional facts are, in fact, really the matters to be decided by the authorities under the Act. They are not those questions of fact on the existence of which the authority to decide a particular cause depends. There is admittedly relationship of landlord and tenant between the parties and it is nowhere provided in the Act that the exercise of the jurisdiction by the Assistant Collector or any other authority for the purpose of examining the claim of the tenants

(1) 1954 P.L.R. 1.

under section 18 will depend on the existence of any particular state of facts. Matters referred to in sub-section (1) of section 18 of the Act do not constitute conditions precedent to the exercise of jurisdiction by the tribunals under the Act. They cannot, by any stretch of imagination, be treated as facts which the Assistant Collector has first to determine in order to come to the conclusion whether he has jurisdiction to proceed under section 18 of the Act or not. Any decision given by him on these matters, whether right or wrong, will be within his jurisdiction and not amenable to judicial review in a civil Court. The Subordinate Judge, First Class, Rohtak, made a wholly erroneous approach to the case in sitting almost in appeal on the questions of fact forgetting that he had no jurisdiction to do so. He considered the evidence in detail, both oral and documentary, and held on a question of fact that the plaintiffs had proved themselves to be in possession of the suit land for the requisite period. This is just what he had no power to do. The District Judge very rightly allowed the appeal and dismissed the suit.

(5) For the foregoing reasons, I find no merit in the appeal which stands dismissed, but there will be no order as to costs.

K.S.K.

CIVIL MISCELLANEOUS.

Before Narula and Sandhawalia, JJ.

MALKIAT SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2566 of 1968.

October 3, 1968.

Constitution of India (1950)—*Article* 5—*Private International Law—Word 'domicile'—Definition of—Abandonment of domicile of origin—Burden to prove—On whom lies—Evidence necessary to discharge the burden.*

Held, that it is impossible to lay down an absolute definition of word 'domicile'. The term lends itself to illustrations but not to definition. Nevertheless, two constituent elements are necessary in law for the existence of