A ASSA SINGH (D) BY LRs.

v.

SHANTI PARSHAD (D) BY LRs. & OTHERS

(Civil Appeal No. 6915 of 2021)

B NOVEMBER 17, 2021

[K. M. JOSEPH AND S. RAVINDRA BHAT, JJ.]

Punjab Security of Land Tenures Act, 1953:

s. 25 – Bar of jurisdiction of the civil court under – When the C *landlord-tenant relationship is disputed in a proceeding u/s. 14A – Held: If a landlord-tenant relationship is disputed, despite the exclusive jurisdiction conferred on the Revenue Court, to even order eviction of a tenant, the Civil Court would still retain jurisdiction in a case, despite the bar u/s. 25 – Thus, the validity of the orders u/s.* D *14A is open to scrutiny in a Civil Court, in a situation, when the tenant denies and disputes the case of the landlord that there is a landlord-tenant relationship – However, a mere plea by the tenant, should not render the Authorities helpless and bereft of power to order eviction – In a situation, where the Authority finds the plea of the tenant to be completely frivolous and mere attempt at blocking* E *the proceedings, the validity enacted u/s. 25 cannot be diluted – On facts, appellant claiming to have purchased the suit property from Mahant, the previous landlord filed application for ejectment of respondent No. 1-tenant on the ground of non-payment of rent which was allowed by the Assistant Collector and thereafter, upheld by the Collector and the Commissioner – First respondent then filed* F *suit seeking declaration that the suit property is owned by a Mandir, the Mahant having sold it to appellant as manager of the Mandir without having any title in the property– Suit decreed by the trial court holding that the Mandir was the owner and no rights were conveyed to the appellants under the sale – Thereafter, appeal as* G *also Second Appeal by the appellants dismissed – Appellants claim under an assignment made by the Mahant, who has been found to be without Authority to convey any right to the appellants – In such circumstances, it cannot be said that the suit filed by tenant is clearly barred – s. 14A.*

H

s. 25 – Exclusion of courts and authorities – Interpretation of – Explained.

Punjab Tenancy Act, 1887: ss. 40-45, 75-78, 80, 82, 84, 88, 89, 98-100 – Provisions pertaining to ejectment of tenant – Provisions pertaining to jurisdiction and procedure – Stated.

Dismissing the appeal, the Court

HELD: 1.1 The Punjab Security of Land Tenures Act, 1953 received the assent of the President on 15.04.1953. The Act went on to introduce the concept of permissible area, which was defined in the Act. It further provided for protection of the tenant from being evicted except in certain circumstances. [Para 15][1176-A-B]

1.2 The submission of the respondent, who successfully instituted the Suit in question and prosecuted the same, is that the bar on the Section 25 will not apply, having regard to the fact that there is a dispute relating to the very existence of landlord-tenant relationship; and that the ouster of the Civil Court's jurisdiction does not apply in view of the fact that plaintiff-tenant does not admit that the appellants are his landlords. Such a question cannot be decided by the Authority in an action under Section 14A of the Act. Equally, the incompetency is applicable to the Appellate Authority and the Revisional Body, viz., the Collector and the Commissioner. In fact, the Financial Commissioner rightly opined that it is a matter for consideration by a Civil Court. [Para 21][1178-C-E]

1.3 The application for ejectment was filed by the appellants claiming to have purchased the rights of the previous landlord by way of sale deed. The dispute was whether the Mandir was the owner and the Mahant was competent in his own rights to convey the rights of the land owner. The Assistant Collector, Collector and the Commissioner repelled the contention of the respondent-tenant, by holding that in view of the transfer by the sale deed dated 16.11.1956 by the Mahant, the appellants became landlords, competent to eject the respondent-tenant. The findings of the Civil Courts, on the other hand, is that the respondent-tenant has never paid rent and attorned to the appellants and the Mandir

was the owner and no rights were conveyed to the appellants under the sale. [Para 22][1178-E-G]

2.1 Section 14A of the Act provides that the Assistant Collector is to proceed as provided for in sub section 2 of Section 10 of the Act and the provisions of sub section 3 of Section 10 was to apply in relation to such application. Section 10 (2) declares that on the receipt of an application the Assistant Collector after giving to the parties notice in writing and the reasonable opportunity to be heard determine the dispute summarily and shall keep a memorandum of evidence and a gist of his final order with brief reasons therefor. Section 10 (3) on the other hand provides that when an application has been made which in the context of Section 14A must be read as an application under Section 14A, any proceeding in relation to the same matter pending in any other court or before any other authority shall be stayed on receipt of information by that court or authority from the Assistant Collector that he has received an application under Section 14A. The effect of Section 10 (3) further would be that all proceedings in a court or before any authority shall lapse when the dispute has been determined by the Assistant Collector acting under the Act.There are two aspects which emerge. The first aspect is that the Assistant Collector acting under Section 14A read with Section 10 (2) must give a reasonable opportunity to the tenant and determine the dispute summarily. This is an important pointer to the nature of the power which is exercised by the Assistant Collector. In a case of a dispute raised by the tenant about the very existence of the landlord-tenant relationship, in a provision which contemplates evicting a person who is the tenant, the duty to render a summary decision appears incongruous with the imperative need for the authority to be able to unravel the many dimensions of a dispute which is genuinely raised by the tenant about there being a landlord-tenant relationship. In other words what is to be rendered is a summary decision and justice would neither be done to the nature of the power enjoyed by the Assistant Collector nor to the right of a party to seek redress in a Civil Court otherwise, unless the power of the Civil Court is preserved. [Paras 46-48][1196-C, F-H; 1197-A-D]

Magiti Sasamal v. Pandab Bissoi **AIR 1962 SC 547:[1962] SCR 673 – referred to.**

2.2 The other aspect which emerges is that Section 10(3) which contemplates proceedings in relation to the same matter in any other court or authority being stayed, when such court or authority is informed by the Assistant Collector of having received an application under Section 14A read with Section 10. The law giver has however provided that the Assistant Collector must proceed with the application but determine the dispute summarily. Upon the dispute being determined by the Assistant Collector the proceedings which were stayed by the court or any other authority would lapse. This sub section gives the impression that the powers of the Assistant Collector are meant to be exhaustive. [Para 49][1197-E-F]

2.3 An application for ejectment of a tenant is to be made before the Assistant Collector under Section 14A. Such an application is to be decided after giving notice and it is to be decided summarily. Since the exclusive power to decide the application to evict the tenant has been conferred on the Assistant Collector, the law giver has further contemplated that after receipt of such an application by the Assistant Collector no other court or authority is to proceed with 'any case relating to the same matter' upon being informed by the Assistant Collector of the receipt of the application under Section 14A. What is more such proceeding is to lapse after the determination of the dispute by the Assistant Collector. The law giver no doubt does contemplate an exclusive and expeditious remedy for the landlord to seek eviction brooking no over lapping of jurisdiction by exercise of power by any other court or authority on a parallel basis. However, this provision cannot mean that when the very existence landlord-tenant relationship is brought under a cloud by the tenant raising a dispute then the very premise on which the exclusive jurisdiction conferred on the Assistant Collector is not overturned. In other words, the law giver has proceeded on the basis that the Assistant Collector is clothed with the power to decide a matter relating to eviction in a summary fashion. This would be inconsistent with scenario where the very existence of the landlord-tenant

relationship is disputed. The law giver in other words proceeds on an assumption that the application made by the landlord is against a person who is indeed the tenant. [Para 50][1197-G-H; 1198-A-D]

2.4 What is contemplated is that during the pendency of the proceeding before the Assistant Collector even a suit in a civil court where the title of the landlord is questioned or in other words there is a challenge thrown to the very existence of the landlord-tenant relationship is not permitted. Even in such a scenario after the conclusion of the proceeding, in the light of the decisions of this court starting with *Magiti Sasamal's* case, *Raja Durga Singh's* case and *Richpal Singh's* case, would apply and the bar under Section 25 would not available. The Civil Court would have the power in a case where without it being a frivolous challenge to the landlord tenant-relationship, in a genuine dispute relating to landlord-tenant relationship, the orders passed by the authorities under the Act can be found to be null and void for the reason that transgressing the power conferred, the authorities proceed to decide the matter, (which again it must be remembered under Section 10 (2) is to be a summary decision) which is the vexed issue relating to the very existence of the landlord-tenant relationship. [Para 51][1198-D-G]

Magiti Sasamal v. Pandab Bissoi **AIR 1962 SC 547 : [1962] SCR 673;** *Shri Raja Durga Singh of Solon v. Tholu and others* **AIR 1963 SC 361 : [1963] SCR 693;** *Richpal Singh and others v. Dalip* **(1987) 4 SCC 410 : [1988] 1 SCR 93 – referred to.**

2.5 The words used in Section 25 of the Act, is that except in accordance with the provisions of the Act, the validity of any proceeding or Order, taken or made under the Act, cannot be questioned in any Court or before any other Authority. In other words, an Order passed under Section 14A, could be challenged by way of an Appeal, Review and Revision, as provided in the Tenancy Act, adverted to in Section 24 of the Act. This explained, the question perseveres, however, as to whether the validity of proceeding or Order passed, is beyond challenge in a Civil Court, under circumstances analogous to that obtaining, with reference

to a proceeding under Section 77 of the Punjab Tenancy Act. In other words, Section 77 of the Tenancy Act, inter alia, provided for seeking eviction of a tenant before the Revenue Officer. Section 14A of the Act, similarly, confers powers upon the Revenue Officer, to entertain an application for evicting a tenant. [Para 52][1198-G-H; 1199-A-C]

Amar Singh and others v. Dalip **(1981) ILR 3 P&H 582 – referred to**

2.6 The principles relating to exclusion of Civil Court's jurisdiction are well-settled. Ouster of the jurisdiction of the Civil Court is not readily inferred. In the scheme of the Tenancy Act also, an Order under Section 77 could be subjected to Appeal, Review and Revision, as provided in the Act. Section 77(3) of the Tenancy Act, purported to confer exclusive power on the Revenue Court to decide certain disputes and ousted jurisdiction of courts. This included the proceeding to evict the tenant. In other words, Civil Court could not entertain the application to evict a tenant. It is in this statutory framework that this Court has stated the view that if a landlord-tenant relationship is disputed, despite the exclusive jurisdiction conferred on the Revenue Court, to even Order eviction of a tenant, the Civil Court would still retain jurisdiction in a case where there is a dispute relating to landlord-tenant relationship. The Act was enacted in 1953. Section 14A of the Act, provided for the eviction of a tenant notwithstanding anything contained in any other law. Therefore, apart from the fact that it became an exhaustive catalogue of circumstances, entitling the landlord to launch proceedings for eviction and also further designating the Statutory Authority, before which, it could be filed, it provided for a bar to challenge the validity of the orders passed, except by way of the remedies provided under the Tenancy Act. There would not be any justification for revisiting the principle laid down that when the relationship between landlord and tenant is contested, the Civil Court continue to have the jurisdiction despite the bar under Section 25 of the Act. There is no reason to hold that the validity of the Order passed by the Assistant Collector, as may be upheld in Appeal, Review or Revision, cannot be questioned in a Civil

Court, if the expression "validity" is conflated with legality. In other words, if an Order is illegal, it would be invalid. The illegality of an Order can arise out of various causes. An Order may be illegal, and therefore, invalid, on the ground that the Author of the Order, in this case, the Authorities designated under Section 14A, did not have the power to decide the issue. In this case, the concern is with illegality due to absence of power. This Court is not called upon to decide the position, where the Authority, under the Act, violates the fundamental procedure relating to natural justice and the Civil Court is invited to sit in Judgment over the same. It is found that the expression "validity of the decision or the Order" in Section 25 of the Act, would not include a case where, despite a dispute projected, that there was no landlord-tenant relationship, the Authority decides the said issue in the course of the Order of Eviction, under Section 14A, after brushing aside the tenant's objection relating to his position, viz., that he is not a tenant. In such a situation, the validity is tied-up with the fundamental aspect of absence of power of the Authority to decide on the question of landlord-tenant relationship. Therefore, the validity of the orders under Section 14A is open to scrutiny in a Civil Court, in a situation, when the tenant denies and disputes the case of the landlord that there is a landlord-tenant relationship. However, a mere plea by the tenant, should not lead, without anything more, to render the Authorities helpless and bereft of power to order eviction. In a situation, where, the Authority finds the plea of the tenant to be completely frivolous and mere attempt at blocking the proceedings, the validity enacted under Section 25, cannot be diluted. The position must be understood as that the power to decide, cannot be assigned to the Authorities under the Act, of the existence of the landlord-tenant relationship. [Para 53][1199-C-H; 1200-A-F]

3. The case of the appellants is that of failure to pay rent by the respondent-tenant. The tenant claims to be a tenant under the Mandir, which has been found to be the owner of the property. Appellants claim under an assignment made by the Mahant, who has been found to be without Authority to convey any right to the appellants. In such circumstances, the submission of the appellants is meritless. [Paras 54, 55][1200-F-G]

Shankar Singh Etc. v. Mangal Singh Etc. **AIR 1973 P&H 307;** *State of Punjab (now Haryana) and others v. Amar Singh and another* **(1974) 2 SCC 70 : [1974] 3 SCR 152;** *Salem Advocate Bar Association, T.N. v. Union of India* **(2005) 6 SCC 344 : [2005] 1 Suppl. SCR 929;** *Kamla Devi Widow of Hans Raj, etc. v. Financial Commissioner (Appeals), Punjab and others* **(2013) SCC Online P&H 7911;** *Bhagwat Sharan (Dead Through Legal Representatives) v. Purushottam and others* **(2020) 6 SCC 387;** *Heman and another Appellants v. Tulsi Ram* **R.S.A. No. 1511 of 1970;** *Chandu Lal v. Kalia and Goria* **Civil Revision No. 849 of 1973;** *Kul Bhushan etc. v. Faquira and others* **L.P.A. No. 35 of 1974;** *Ramzani v. Abad Shah* **R.S.A. No. 1975 of 1971;** *Jia Lal and another v. State of Haryana and others* **Writ Petition No. 1785 of 1968;** *Jaswant Rai and another v. Bhagwan Dass and another* **R.S.A. No. 1120 of 1963;** *Raja Ram and another v. Raghubir Singh and another* **Civil Writ No. 1288 of 1967;** *Khazan Singh another v. Dalip Singh and another* **L.P.A. No. 623 of 1968;** *Om Prakash Gupta v. Dr. Ratan Singh and another* **(1964) 1 SCR 259 – referred to**

Case Law Reference

AIR 1973 P&H 307	**referred to**	**Para 24**
[1974] 3 SCR 152	**referred to**	**Para 24**
[2005] 1 Suppl. SCR 929	**referred to**	**Para 24**
(2020) 6 SCC 387	**referred to**	**Para 24**
(1964) 1 SCR 259	**referred to**	**Para 37**
[1962] SCR 673	**referred to**	**Para 48, 51**
[1963] SCR 693	**referred to**	**Para 51**
[1988] 1 SCR 93	**referred to**	**Para 51**
(1981) ILR 3 P&H 582	**referred to**	**Para 52**

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6915 of 2021.

From the Judgment and Order dated 27.02.2004 of the High Court of Punjab & Haryana at Chandigarh in RSA No.1777 of 1981.

Ms. Archna Midha, Vineet Bhagat, K. G. Bhagat, Ms. Manju
B Bhagat, Mohit Gulati, Advs. for the Appellants.

Tarun Jindal, Jagjit Singh Chhabra, Saksham Maheshwari, Advs. for the Respondents.

The Judgment of the Court was delivered by

K. M. JOSEPH, J.

C 1. Leave granted.

2. An application for Ejectment was filed by the Appellants and Proforma Respondents 2 to 21 for ejectment of Respondent No. 1 on the ground of non- payment of rent. The application was filed under the Punjab Security of Land Tenures Act, 1953 hereinafter referred to as
D 'the Act'.The application was allowed by the Assistant Collector1st Grade, Ferozepur by Order dated 13.09.1972. The appeal filed by the first respondent before the Collector, Ferozepur under Section 24 of 'the Act'was dismissed vide order dated 04.09.1973. The Commissioner by order dated 04.02.1974 on revision filed by the first respondent recommended to the Financial Commissioner, Punjab for setting aside
E the order leaving the parties to seek relief through the Civil Court. This reference was disallowed and the revision petition of the first respondent was dismissed by the Commissioner, Punjab vide his order dated 22.08.1974. The review filed by the first respondent was dismissed. The first respondent instituted a Suit wherein the relief sought as noted in the
F judgment of the Trial Court is:

> "... declaration to the effect that agricultural land measuring 594 kanals 17 marlas as per details given in the heading of the plaint, situated in Jhoke Harl Har, Tehsil Ferozepure as entered in Jamabandi for the year 1965-66 is owned by Mandir Jhoke Hari
G Har (Public Religious Endowment) through Shri Inder Singh son of Harnam Singh resident of village Jhoke Hari Har, one of the worshippers and defacto trustee of Mandir Jhoke Hari Har (defendant No.18) and defendant No. 1 to 17 have got no concern with the land and a decree for ejectment of land in dispute obtained by defendant No. 1 to 17 against the plaintiff from the Assistant
H Collector Grade-I, Ferozepure is nullity and without jurisdiction

with consequential relief of permanent injunction restraining the defendants No. I to 17 from taking actual possession of the suit land."

3. The Trial Court, by Judgment dated 18.11.1978, decreed the Suit. The Appeal carried by the appellants before the 1st Additional District Judge, Ferozepur, was dismissed. By the impugned Decree and Judgment, the Regular Second Appeal No. 1777 of 1981, has been dismissed.

4. We heard the learned Counsel for the Appellants and learned Counsel for the Respondents. The only question, which falls for our decision, revolves around the interpretation of Section 25 of the Act. Section 25 of the Act reads as follows:

"Section 25. Exclusion of courts and authorities - Except in accordance with the provisions of this Act, the validity of any proceedings or order taken or made under this Act shall not be called in question in any court or before any other authority."

5. In other words, the only contention asserted by the appellants is that the suit filed by the first respondent is clearly barred. On the other hand, the contention of the respondents is that, having regard to both the facts and law, the Suit is maintainable.

THE FINDINGS IN THE IMPUGNED JUDGMENT

6. It is necessary to notice the case of the appellants. They claim that they purchased the suit property which measured 594 Kanals and 17 Marlas by sale deed dated 16.11.1956 from Mahant Ramji Dass. The first respondent was the tenant in the said land. The case of the first respondent, on the other hand, was that, he obtained the Suit land on lease on 20.10.1955 from Mahant Ramji Dass as the Manager of the Mandir for a period of five years on payment of Rs.1,000/- per annum as rent. Thereafter, the suit property was leased to him for a period of 20 years from 1960 to 1980. While so, it is the further case of the first respondent that Mahant Ramji Dass sold the Suit land to the appellants vide registered sale deed dated 16.11.1956,without having any title in the property, as the property belonged to the Mandir. Thus, the first respondent set up the case that he was not a tenant under the appellants. Resultantly the order passed for eviction was null and void being without jurisdiction. The appellants took up the contention that the land was the personal property of Mahant Ramji Dass and on failure of the first

respondent as tenant to pay the rent the application before the Revenue Court was perfectly maintainable.

7. The Trial Court framed 8 issues. They are as follows: -

"l. Whether the plaintiff secured the disputed land on lease from Mandir Jhoke Hari Har defendant No.18 through its Manager Ramji Dass deceased and is in possession of the disputed land as lessee of defendant No.18? OPP

2. Whether Mahant Ramji Dass (deceased) was the absolute owner of the disputed land having right to alienate the same?OPD

3. Whether Mahant Ramji Dass (deceased) validly sold the disputed land in favour of defendants No. I to 17 by means of registered sale deed dated 16.11.56? If so, its effect?OPD

4. Whether the orders of ejectment passed by the Revenue Authorities are void and illegal in view of the grounds mentioned in para No.4 of the plaint? OPP

5. Whether the present suit is barred by principle of resjudicata? OPD

6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

7. Whether the plaintiff is estopped from challenging the title of Mahant Ramji Dass deceased in the disputed property? OPD

8. Whether there is no Mandir by the name of Mandir Jhoke Hari Har, if so, what is its effect? (Onus objected to)"

8. The Trial Court held that the suit land was the property of the Mandir. It was leased to the first respondent plaintiff by its Manager Mahant Ramji Dass. It proceeded to hold further that there is no valid sale vide registered sale deed dated 16.11.1956 to the appellants, as Mahant Ramji Dass had no title in the property to convey. Answering Issue No. 4, it was found that the revenue authorities had no jurisdiction to order eviction. There was no relationship of landlord and tenant between the appellants and the respondent. Issue No. 6 was not pressed and it stood decided against the appellants. Equally, the Court found that the Suit was not barred by principle of *res judicata*. The respondent was found not estopped from challenging the title of Mahant Ramji Dass.

9. The First Appellate Court found that Section 116 of the Indian Evidence Act, 1872 (for short 'Evidence Act') did not apply to a person who claimed to be a representative of the landlord by assignment by merely purchasing the landlord's interest. The purchaser did not become the landlord entitled to the protection of Section 116 of Evidence Act. It was only if the tenant attorned to him that benefit of Section 116 of Evidence Act became available. The Appellate Court found that there was no evidence that first respondent had paid any rent to the appellants or recognized them as the landlords. There was no privity of contract. In other words, Section 116 of the Evidence Act was available only to a person who was the landlord at the beginning of the tenancy. The tenancy in favour of the first respondent had commenced based on the lease deed dated 20.10.1955 executed by the General Attorney of Mahant Ramji Dass, Shri Balak Nath. This lease was found to be period of 5 years wherein the Mandir was described as the owner in possession. Therefore, when the subsequent lease deed was executed dated 25.01.1956, the first respondent was already in possession as a tenant. The tenancy was under the Mandir and not under the Mahant in an individual capacity. The further finding of the Appellate Court is that, in the *Jamabandis* for the year 1939-40, the Suit property had been recorded as owned by the Mandir under the management of Mahant Ramji Dass Chela Baba Mohan Dass. In the earlier *Jamabandis* though the name of the Mandir did not occur as owner, it was found that the property had been devolving from Guru to Chela. The natural heirs were being excluded. Mahant Ramji Dass, through the General power of Attorney, had admitted that the Suit property was owned by the Mandir. Mahant Ramji Dass was only its Manager. The first respondent was not a party to the decree dated 26.08.1960 obtained by Mahant Ramji Dass. Equally, the Mandir was also not a party under the revenue records. Mahant Ramji Dass was not the owner of the property mutation in favour of the vendees was not being sanctioned. Then, the Mahant filed the said Suit, wherein, the appellants were made defendants, who admitted the claim of Mahant Ramji Dass.The suit went uncontested in the First Appellate Court. Consequently, it is found that the Decree, dated 26.08.1960, was merely a collusive decree. Mahant Ramji Dass being only the manager of the suit property was bereft of power to sell and the sale deed was invalid. Consequently, the appellants did not acquire title.

10. The High Court, by the impugned Judgment, agreed with the concurrent findings of the courts. The High Court went on to find Mahant

A Ramji Dass was only the Manager of the Mandir and he did not have power to alienate its property. Protection under Section 116 of the Evidence Act was not available to the appellants as there was no landlord-tenant relationship between the appellants and the first respondent. The contention further that the sale deed and the Decree dated 26.08.1960, could only be challenged by the Mandir and not by the first respondent was rejected. It was found that no such plea was raised in the courts below. It was further found that the legal proposition that a revenue court authorities could not decide the question of title has not been disputed by the Counsel for the appellants. The revenue authority acted illegally by deciding the question of title and passing Order of Eviction.

C 11. We are concerned in this case with the bar of jurisdiction of the Civil Court under Section 25 of the Act. The Act must be read and understood bearing in mind, the provisions of the Punjab Tenancy Act, 1887 (hereinafter referred to as 'the Tenancy Act', for short). The word 'tenant' is defined in the Tenancy Act in Section 4(5). The word 'landlord' D was defined in Section 4(6) of the said Act, as meaning the person under whom a tenant holds land, and to whom, the tenant, or but for the special contract would be, liable to pay rent for that land. The word 'tenant' and 'landlord' were defined to include the predecessors and successors in interest of a tenant and landlord, respectively. Under Section 5, tenants having right of occupancy was described and declared. Chapter III of E the Tenancy Act dealt with 'rents' generally. Rents were to consist of either produce rents or cash rents. Section 39 provided for ground of ejectment of occupancy tenant.

12. Section 40 provides for ejectment of tenants for a fixed term. The third categorization of tenant in the matter of ejectment is captured F in Section 41, which provided for ejectment of tenant from year to year. Section 42 provided for restriction on ejectment. It reads as follows:

> "42. Restriction on ejectment – A tenant shall not be ejected otherwise than in execution of a decree for ejectment, except in the following cases, namely:-
>
> G
>
> (a) when a decree for an arrear of rent in respect of his tenancy has been passed against him and remains unsatisfied;
>
> (b) when a tenant has not a right of occupancy and does not hold for a fixed term under a contract or a decree or order of competent authority."
>
> H

13. Section 43 provided for the exceptional cases mentioned in Section 42, *viz*., when a tenant could be ejected, otherwise than in execution of a Decree for Ejectment. The application was to be made to a Revenue Officer. Sections 44 and 45 provided for circumstances mentioned in Section 42(a) and 42(b), prospectively. Section 50A provided for a bar to Civil Court entertaining a Suit filed by a tenant contesting his liability to ejectment or to recover possession or occupancy rights or to recover compensation in the circumstances mentioned therein. Chapter VII deal with jurisdiction and procedure. Section 75 provided that there shall be the same classes of Revenue Officers as provided in the Punjab Land Revenue Act, 1887. Section 76 provided for applications and proceedings to be considered by the Revenue Officer. They were divided into three groups. Section 77(1) reads as follows:

> "77. Revenue Courts and suits cognizable by them - (1) When a Revenue-officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3); or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court."

14. Section 77(3) provided that the Suit mentioned thereafter, were to be instituted, heard and determined by the Revenue Court and no other Court was to take cognizance of any dispute or matter with respect to which any such Suit may be instituted. Again, it is divided into three groups. In the first group, Clause (e) was "Suits by landlords to eject the tenant". Under Section 78, the Financial Commissioner was conferred general superintendence and control over all other Officers and Revenue Courts. Section 80 provided for Appeal from an Original or Appellate Order or Decree made under the Tenancy Act by a Revenue Officer or Revenue Court. Section 82 provided for power of review by a Revenue Officer. Section 84 provided for the power of Revision with the Financial Commissioner, the Commissioner and Collector. Section 88 provided for the procedure to be followed by the Revenue Court. The Revenue Officer and the Revenue Court are empowered under Section 89 to summon any person. Section 98 contemplated power to refer a party to a Civil Court. Section 99 clothes the Presiding Officer of a Civil or a Revenue Court entertaining doubts regarding jurisdiction to refer a matter to the High Court. Section 100 empowered the High Court in certain circumstances to validate proceedings held under mistake as to jurisdiction.

15. The Act of 1953, with which, we are concerned, received the assent of the President on 15.04.1953. The Act went on to introduce the concept of permissible area, which was defined in the Act. It further provided for protection of the tenant from being evicted except in certain circumstances. The word "land owner" was defined in Section 2(1) as follows:

> "2(1) "Landowner" means a person defined as such in the Punjab Land Revenue Act, 1887 (Act XVII of 1887), and shall include an "allottee" and "lessee" as defined in clauses(b) and (c), respectively, of section 2 of the East Punjab Displaced Persons (Land Resettlement)Act, 1949 (Act XXXVI of 1949), hereinafter referred to as the "Resettlement Act". Explanation – In respect of land mortgaged with possession, the mortgagee shall be deemed to be the landowner."

16. "Tenant" was assigned the same meaning as was assigned under the Tenancy Act and was to include a sub-tenant and self-cultivating lessee but not to include a present holder, as defined in Section 2 of the Resettlement Act. Section 9 provided for the liability of the tenant to be ejected. This was to apply not withstanding anything contained in any other law for the time being in force. Section 9(ii) provided for ejecting of the tenant if he failed to pay the rent regularly without sufficient cause. Section (iii) further provided for ejectment of the tenant in arrears of rent at the commencement of the Act. There were other grounds also available. Section 14A of the Act read as follows:

> "14-A. Not with standing anything to the contrary contained in any other law for the time being in force, and subject to the provisions of section 9-A.-
>
> (i) a land owner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector First Grade having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of sub-section 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in relation to such application, provided that the tenants rights to compensation and acquisition of occupancy rights, if any under the Punjab Tenancy Act, 1887 (XVI of 1887), shall not be affected;

(ii) a land-owner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector Second Grade, having jurisdiction, who shall thereupon send a notice in the form prescribed to the tenant either to deposit the rent or value thereof , if payable in kind or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent or of the fact of the landlords refusal to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in sub-section (2) of Section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent he shall eject the tenant summarily and put the landowner in possession of the land concerned;

(iii) (a) if a landlord refuses to accept rent from his tenant or demands rent in excess of what he is entitled to under this Act, or refuses to give a receipt, the tenant may in writing inform the Assistant Collector second Grade, having jurisdiction of the fact; 1New section 14-A, added by Punjab Act, 11 of 1955.

(b) on receiving such application, the Assistant Collector shall by a written notice require the landlord to accept the rent payable in accordance with this Act, or to give a receipt, as the case maybe, or both,within 60 days of the receipt of the notice."

17. Section 23 read as follows:

"23. Abrogation of pending decrees, orders and notices:

No decree or order of any court or authority and no notice of ejectment shall be valid to the extent to which it is consistent with the provisions of this Act."

18. Section 24 provided for Appeal, Review and Revision and it reads as follows:

"24. The provisions in regard to appeal, review and revision under this Act, shall, so far as may be, the same as provided in Sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887 (Act XVI of the 1887)."

19. It is thereafter that Section 25 provided:

"25. Exclusion of courts and authorities:

Except in accordance with the provisions of this Act, the validity of any proceeding or order taken or made under this Act, shall not be called in question in any court or before any other authority."

20. We are called upon to decide the ambit of Section 25 of the Act, which is the only contention raised by the appellants. We have already noticed that the appellants have lost in all the three Courts on merits.

21. The contention of the respondent, who successfully instituted the Suit in question and prosecuted the same, is that the bar on the Section 25 will not apply, having regard to the fact that there is a dispute relating to the very existence of landlord-tenant relationship. It is his contention that the ouster of the Civil Court's jurisdiction does not apply in view of the fact that plaintiff-tenant does not admit that the appellants are his landlords. Such a question cannot be decided by the Authority in an action under Section 14A of the Act. Equally, the incompetency is applicable to the Appellate Authority and the Revisional Body, *viz*., the Collector and the Commissioner. In fact, the Financial Commissioner rightly opined that it is a matter for consideration by a Civil Court.

22. To recapitulate the facts, application for ejectment was filed by the appellants claiming to have purchased the rights of the previous landlord by way of sale deed dated 16.11.1956. The dispute was whether the *Mandir* was the owner and the *Mahant* was competent in his own rights to convey the rights of the land owner. The Assistant Collector, Collector and the Commissioner repelled the contention of the respondent-tenant, by holding that in view of the transfer by the sale deed dated 16.11.1956 by the *Mahant*, the appellants became landlords, competent to eject the respondent-tenant. The findings of the Civil Courts, on the other hand, is that the respondent-tenant has never paid rent and attorned to the appellants and the Mandir was the owner and no rights were conveyed to the appellants under the sale.

23. Both parties have relied upon a large body of case law.

THE CASE LAWS RELIED UPON BY THE APPELLANTS

24. They are as follows:

i. In *Shankar Singh Etc. v. Mangal Singh Etc.*[1], an *ex parte* Order of Ejectment passed by the Assistant Collector came to be set aside by the Collector. The Collector ordered the tenant to be put back in possession. The learned Judge found assurance in the principle that an act of Court could not cause injury to any of the parties. The Court relied upon Rules made under the Act and also the Tenancy Act. It was further, no doubt, observed that, under Section 25 of the Act, the Order could not be challenged in a Civil Court and the Suit was, therefore, barred under Section 25. We may at once notice that this case did not involve any dispute concerning the existence of landlord-tenant relationship.

ii. In *State of Punjab (now Haryana) and others v. Amar Singh and another*[2], a Bench of three learned Judges had to consider the question,*inter alia*, as to whether the expression "transfer" or "other disposition of land", in Clause (b) of Section 10A of the Act, included involuntary transfer of a part of holding of a land owner by operation of an Order forcing a land owner to sell a part of his holding to a tenant under Section 18 of the Act. In the Majority Judgment, the contention of the appellant-State was accepted. Justice R.S. Sarkaria dissented. In the course of his dissent, while surveying the Act and having considered the scheme of the Tenancy Act as well, the learned Judge held as follows:

> "101. Section 25 of the Act provides:
>
> "Except in accordance with the provisions of this Act, the validity of any proceedings of order taken or made under this Act shall not be called in question in any Court or before any other authority."
>
> 102. On analysis of the Section, it is clear that it gives a two-fold mandate. On one hand it debars the jurisdiction of Courts or other authorities to question the validity of any proceeding or order taken or made under the Act, and on the other it prohibits the impeachment of such orders or proceedings in a manner which is not in accordance with the provisions of the Act. It indicates

[1] AIR 1973 P&H 307
[2] (1974) 2 SCC 70

A that decisions of the authorities under the Act can be challenged only by way of appeal, review or revision as provided in Sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887, made applicable by Section 24 of the Act, or in the Rules made under the Act.

B 103. The Punjab and Haryana High Court has consistently taken this view. The Full Bench in *Dhaunkal* v. *Man Kauri* (supra) also held that the Assistant Collector while dealing with the purchase application under Section 18 has no jurisdiction to sit in appeal or revision over the order of the Surplus Area C Collector passed in surplus area proceeding and he has no jurisdiction to ignore that order.

104. The rule equally holds good in the converse. In the Full Bench decision in *Mam Raj* v. *Punjab State (supra)*, it was held that once an application of the tenant D under Section 18 has been allowed and the order is not set aside in appeal or revision, the same becomes final and remains immune to an attack against its validity on any ground including that of collusion, before the co-ordinate authorities under the Act dealing with the E question of determination of surplus area. If I may say so with respect, this proposition laid down by the Full Bench is unexceptionable."

We may incidentally notice the substance of the question which arose in the said case. The Act contemplates a maximum holding, F which is permissible, which is described as the permissible area. The Act also provided for the excess land or the surplus land to be vested in the State to be utilised for assigning the land to the landless. The tenant of a landlord, in certain circumstances, could obtain an order of purchase. This was provided in Section 18. Section 10A(b) of the Act, on the other hand, provided that G 'transfer' or 'other dispossession of property' in certain circumstances, were to be treated as void. Justice R.S. Sarkaria took the view that merely because there was a compromise, as long as the ingredients of the statutory provisions were satisfied, such an Order could not be brushed aside on the ground that it H was born out of compromise. As we shall see from a consideration

of other decisions that this Judgment may not advance the case of the appellants that Section 25 will be an absolute bar.

iii. We do not think that the Judgment of this Court in *Salem Advocate Bar Association, T.N. v. Union of India*[3] should detain us as it does not specifically deal with the question at hand.

iv. In *Kamla Devi Widow of Hans Raj, etc. v. Financial Commissioner (Appeals), Punjab and others*[4], a Bench of the Punjab and Haryana High Court was dealing with an Order of the learned Single Judge allowing the Writ Petition, by which, setting aside the Order of the Authorities under the Act, he ordering the appellant's-tenant's eviction. A perusal of the said Judgment does not show that there was any dispute relating to landlord-tenant relationship. In fact, the question revolved around whether right to purchase the right of the landlord by the tenant stood crystalised upon the declaration of the surplus area. It was found by the Court that any subsequent Act, after the declaration of the surplus area by a "big land owner", by transferring of the land by a big land owner or his death before the application of purchase was allowed or even the enactment of the 1972 Act (by which the Act was repealed), did not adversely affect the right of the appellant-tenant to effect purchase of landlord's right under Section 18 of the Act. We would observe that this Judgment, does not, in any way, advance the case of the appellants.

v. The Judgment of learned Single Judge in R.S.A. No. 948 of 2017 of the High Court of Punjab and Haryana also does not, in any way, assist the case of the appellants. On facts, it does not have application as regards the question at hand.

vi. The last Judgment relied upon by the appellants is Judgment of this Court in *Bhagwat Sharan (Dead Through Legal Representatives) v. Purushottam and others*[5]. We take it that the appellants seek to derive support from following paragraphs:

[3] (2005) 6 SCC 344
[4] (2013) SCCOnline P&H 7911
[5] (2020) 6 SCC 387

A "26. It is also not disputed that the plaintiff and Defendants 1 to 3 herein filed suit for eviction of an occupant in which he claimed that the property had been bequeathed to him by Hari Ram. According to the defendants, the plaintiff having accepted the will of Hariram and having taken benefit of the same, cannot turn around and urge that the will is not valid and that the entire property is a joint family property. The plaintiff and Defendants 1 to 3 by accepting the bequest under the will elected to accept the will. It is trite law that a party cannot be permitted to approbate and reprobate at the same time. This principle is based on the principle of doctrine of election. In respect of wills, this doctrine has been held to mean that a person who takes benefit of a portion of the will cannot challenge the remaining portion of the will. In *Rajasthan State Industrial Development & Investment Corpn.* v. *Diamond & Gem Development Corpn. Ltd.* [*Rajasthan State Industrial Development & Investment Corpn.* v. *Diamond & Gem Development Corpn. Ltd.*, (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153 : AIR 2013 SC 1241] , this Court made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one party knowingly accepts the benefits of a contract or conveyance or an order, it is estopped to deny the validity or binding effect on him of such contract or conveyance or order.

27. The doctrine of election is a facet of law of estoppel. A party cannot blow hot and blow cold at the same time. Any party which takes advantage of any instrument must accept all that is mentioned in the said document. It would be apposite to refer to the treatise *Equity—A Course of Lectures* by F.W. Maitland, Cambridge University, 1947, wherein the learned author succinctly described principle of election in the following terms:

"The doctrine of election may be thus stated : that he who accepts a benefit under a deed or will or other

H

instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it…."

This view has been accepted to be the correct view in *Karam Kapahi* v. *Lal Chand Public Charitable Trust* [*Karam Kapahi* v. *Lal Chand Public Charitable Trust*, (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] . The plaintiff having elected to accept the will of Hari Ram, by filing a suit for eviction of the tenant by claiming that the property had been bequeathed to him by Hari Ram, cannot now turn around and say that the averments made by Hari Ram that the property was his personal property, is incorrect."

vii. This is essentially a matter relating to merit concluded by decision of three courts. Further on facts, we do not think the principles are attracted.

CASE LAW RELIED UPON BY THE RESONDENT-TENANT

25. They are as follows:

a. In *Magiti Sasamal v. Pandab Bissoi*[6], the case arose under the Orissa Tenant Protection Act, 1948. Section 7(1) of the Orissa Tenant Protection Act provided as follows:

"6. xxx xxx xxx

"Any dispute between the tenant and the landlord as regards, (*a*) tenant's possession of the land on the 1st day of September, 1947 and his right to the benefits under this Act, or (*b*) misuse of the land by the tenant, or (*c*) failure of the tenant to cultivate the land properly, or (*d*) failure of the tenant to deliver to the landlord the rent accrued due within two months from the date on which it becomes payable, or (*e*) the quantity of the produce payable to the landlord as rent, shall be decided by the Collector on the application of either of the parties"."

The appellant laid a Suit for Inunction in the Civil Court. The respondent-defendant therein pleaded that they were tenants and

[6] AIR 1962 SC 547

A contended that Section 7 posed a bar to the Civil Court entertaining the Suit. This Court went on to hold as follows:

> "10. Let us then revert to Section 7. It would be noticed that Section 7(1) has expressly and specifically provided for five categories of disputes which are within the jurisdiction of the Collector and which
B must therefore be taken to be excluded from the jurisdiction of the civil court. On a reasonable construction of Section 7(1) a dispute specified by Section 7(1)(*a*) would be a dispute between a tenant and a landlord in regard to the former's possession of the land on 1-9-1947. It is clear that the dispute to which Section
C 7(1)(*a*) refers is a narrow dispute as to the possession of the tenant on a specific date and his consequential right to the benefits of the Act. The same is the position with regard to the other categories of the dispute specified by Section 7(1). In none of the said categories is a dispute contemplated as to the relationship of the parties itself. In other words, Section 7(1) postulates the
D relationship of tenant and landlord between the parties and proceeds to provide for the exclusive jurisdiction of the Collector to try the five categories of disputes that may arise between the landlord and the tenant. The disputes which are the subject-matter of Section 7(1) must be in regard to the five categories. That is
E the plain and obvious construction of the words "any dispute as regards". On this construction it would be unreasonable to hold that a dispute about the status of the tenant also falls within the purview of the said section. The scheme of Section 7(1) is unambiguous and clear. It refers to the tenant and landlord as such and it contemplates disputes of the specified character arising
F between them. Therefore, in our opinion, even on a liberal construction of Section 7(1) it would be difficult to uphold the argument that a dispute as regards the existence of the relationship of landlord and tenant falls to be determined by the Collector under Section 7(1).
>
G 11. … <u>If a serious dispute as to the existence of the relationship of landlord and tenant between the parties had been covered by Section 7(1) it is difficult to imagine that the legislature would have left the decision of such an important issue to the Collector giving him full freedom to make such enquiries as he may deem necessary. As is well known, a dispute as to the existence of the</u>
H <u>relationship of landlord and tenant raises serious questions of fact</u>

for decision, and if such a serious dispute was intended to be tried by the Collector the legislature would have provided for an appropriate enquiry in that behalf and would have made the provisions of the Code of Civil Procedure applicable to such an enquiry. Section 7(2) can be easily explained on the basis that the relationship between the parties is outside Section 7(1) and so the disputes that are covered by Section 7(1) are not of such a nature as would justify a formal enquiry in that behalf. The provisions of sub-sections (3), (6) and (7) also indicate that the relationship between the parties is not, and cannot be, disputed before the Collector. The parties arrayed before him are landlord and tenant or vice versa, and it is on the basis of such relationship between them that he proceeds to deal with the disputes entrusted to him by Section 7(1)."

b. In *Shri Raja Durga Singh of Solon v. Tholu and others*[7], the Appeal before this Court arose from a Judgment rendered by the Judicial Commissioner in Second Appeal, taking the view that the Suit in the said case could not be tried by the Civil Court but was to be tried by the Revenue Court under Section 77 of the Tenancy Act, which applied to Himachal Pradesh as well. The Court drew support from *Magiti Sasamal* (supra) and held that the observation in *Magiti Sasamal* (supra) would apply to the case also in as much as relationship of landlord and tenant as between the parties to the Suit was not admitted by the appellant-plaintiff. This Court held:

"6. As these facts were not established the High Court held that the landlord was entitled to sue the defendant who had entered on the land asserting a claim to be a collateral of the deceased tenant but who failed to substantiate his claim. This view was affirmed by a Full Bench consisting of five Judges in the other Lahore case. In *Daya Ram* v. *Jagir Singh* [AIR (1956) Him Pra 61] the same Judicial Commissioner who decided the appeal before us has expressed the view that where in a suit for ejectment the existence of the relationship of landlord and tenant is not admitted by the parties the civil court had jurisdiction to try the suit and that such a suit did not fall under Section 77(3) of the Act. In *Magiti Sasamal* v. *Pandab Bissoi* [AIR (1962) SC 547] this Court was considering the provisions of Section 7(1) of the Orissa Tenants

[7]AIR 1963 SC 361

A Protection Act, 1948 (3 of 1948). The provisions of that section run thus:

> "Any dispute between the tenant and the landlord as regards, (*a*) tenant's possession of the land on the 1st day of September, 1947 and his right to the benefits under this Act, or (*b*) misuse
B of the land by the tenant, or (*c*) failure of the tenant to cultivate the land properly, or (*d*) failure of the tenant to deliver to the landlord the rent accrued due within two months from the date on which it becomes payable, or (*e*) the quantity of the produce payable to the landlord as rent, shall be decided by the Collector on the application of either of the parties."

C

7. It was contended in that case on behalf of the respondents who claimed to be tenants that the suit for permanent injunction instituted by the appellant-landlord was barred by the provisions of Section 7(1). Dealing with this contention this Court observed as follows:

D

> "In other words, Section 7(1) postulates the relationship of tenants and landlord between the parties and proceeds to provide for the exclusive jurisdiction of the Collector to try the five categories of disputes that may arise between the landlord and the tenant. The disputes which are the subject-matter of
E Section 7(1) must be in regard to the five categories. That is the plain and obvious construction of the words 'any dispute as regards'. On this construction it would be unreasonable to hold that a dispute about the status of the tenant also falls within the purview of the said section. The scheme of Section
F 7(1) is unambiguous and clear. It refers to the tenant and landlord as such and it contemplates disputes of the specified character arising between them. Therefore, in our opinion, even on a liberal construction of Section 7(1) it would be difficult to uphold the argument that a dispute as regards the existence of the relationship of landlord and tenant falls to be determined by
G the Collector under Section 7(1)."

The observations of this Court would clearly apply to the present case also inasmuch as the relationship of landlord and tenant as between the parties to the suit is not admitted by the appellant."

H [8] (1987) 4 SCC 410

c. In *Richpal Singh and others v. Dalip*[8], a Decree of Ejectment was passed under Section 77(3) of the Tenancy Act, on the ground of default of rent. The tenant was evicted, the Decree having become final under the Tenancy Act. He, thereafter, filed a Suit in the Civil Court against the appellant therein, contending that he was a mortgagee and not a tenant. A Full-Bench was constituted to hear the question as to whether the decision of the Revenue Court, under Section 77 of the Tenancy Act, or of the Rent Controller, could operate as *res judicata*. This Court, in *Richpal Singh and others* (supra),followed the decision in *Shri Raja Durga Singh of Solon* (supra) and also the Full Bench of the Lahore High Court in ILR 1942(24) Lahore High Court 191 (Full Bench), and held as follows:

> "14. Applying the aforesaid principles, it appears to us that if the dispute was as to the nature of the relationship of landlord and tenant between the parties, the Revenue Court under the Punjab Tenancy Act had no jurisdiction; when there was admitted position, the relationship of landlord and tenant was accepted, the remedies and rights of the parties should be worked out under the scheme of the Act.
>
> 15. A salutary and simple test to apply in determining whether the previous decision operates as res judicata or on principles analogous thereto is to find out whether the first court, here the Revenue Court could go into the question whether the respondent was a tenant in possession or mortgagee in possession. It is clear in view of language mentioned before that it could not. If that be so there was no res judicata. The subsequent civil suit was not barred by res judicata."

d. A Bench of five learned Judges of Punjab and Haryana High Court, in the decision in State of Haryana and others v. Vinod Kumar and others dated 14.10.1985, Second Appeal No. 2930 of 1980, took the view that a Suit lay despite the bar under Section 25 of the Act to challenge an Order, which is a nullity even though passed by the Authority under the Act, in a situation where no notice was served by the Collector before the Order was passed. This case would not have any application in the facts in this case.

26. In *Heman and another Appellants v. Tulsi Ram (died), represented by Lrs.* [in R.S.A. No. 1511 of 1970 dated 07.01.1982], an

A Application was filed under Section 14A of the Act. The defendant denied the title of the plaintiff and claimed that they were the owners. The Punjab and Haryana High Court held that the Civil Court had jurisdiction to entertain the Civil Suit. It was, inter alia, held on the fact "*once a tenant denies the title of the landlord, they become trespassers of the suit land and are, therefore, liable to eviction therefrom"*. This is
B so despite the fact that the Civil Court found that the defendants were tenants.

27. In *Chandu Lal v. Kalia and Goria* (in Civil Revision No. 849 of 1973, decided on 06.01.1976), the learned Single Judge of the Punjab and Haryana High Court was dealing with the bar under Sections 45, 50
C and 50A of the Punjab Tenancy Act in the light of the jurisdiction conferred under Section 77 (3) (f) and (g) of the Act.

28. The tenant, who was ordered to be ejected under Section 45(5), filed a Suit, contesting his liability to be ejected. The Court took the view that the bar under Section 50 A was confined only in respect of
D a suit when ejectment was ordered under Section 46 (6) of the Act. The bar did not apply in regard to the tenant, as he was ordered to be ejected under Section 45(5).

29. In *Kul Bhushan etc. v. Faquira and others (in L.P.A. No. 35 of 1974, decided on 10.03.1976)*, a Division Bench of Punjab and
E Haryana High Court had to consider the following facts – The surplus area of a big land owner was determined under the Act. Thereafter, he died. After two and a half years, the surplus area was allotted to tenants. Possession was also given to them. Kul Bhushan, along with others, who were the legal heirs of the big land owner, filed the Suit for possession,
F contending that they have become small land owners upon the death of their predecessor in interest (the big land owner). Consequently, they were illegally dispossessed. The defendants set up the bar under Section 25 of the Act. The Court took the view that the Order of Utilisation and possession in favour of the defendants-tenants, having been passed and implemented upon the death of the big land owner, Section 10B did not
G apply. It was found that the matter was governed by Section 10A(b). On this basis, it was found that the proceeding or Order, which was sought to be immunised under Section 25 of the Act, was not taken or made under the Act.

H

30. This decision may not, on the facts of the present case, advance the case of the respondents.

31. In *Ramzani v. Abad Shah* [in R.S.A. No. 1975 of 1971, decided on 13.11.1981], the learned Single Judge of the Punjab and Haryana High Court held that the jurisdiction of the Assistant Collector under Section 77 of the Tenancy Act was very limited. In the said case, the appellant had filed the Suit under Section 77 of the Tenancy Act, declaring him as the occupancy tenant. In the said proceeding, one of the issues, which arose was, whether respondent was grandson of one Ashiq Hussain. The Assistant Collector held in the negative, i.e., against the respondent. Thereafter, a Suit was filed in the Civil Court. The Court took the view that the earlier finding would not be *res judicata*.

32. In *Jia Lal and another v. State of Haryana and others* (in Writ Petition No. 1785 of 1968, decided on 04.11.1970), the learned Single Judge of the Punjab and Haryana High Court purported to follow *Magiti Sasamal* (supra) and Shri *Raja Durga Singh of Solon* (Supra) to find that when the relationship of landlord and tenant was denied, it could be decided by the Civil Court and the Writ Petition was not entertained. This was a case where the title of the writ petitioner who claimed as landlord was denied and the Court held that the writ petitioners were entitled to treat the respondent as trespasser and proceed in the Civil Court.

33. In *Jaswant Rai and another v. Bhagwan Dass and another* (in R.S.A. No. 1120 of 1963, decided on 31.08.1971), a Bench of the Punjab and Haryana High Court proceeded on the basis that the Suit in question was maintainable despite Section 77(3) of the Tenancy Act. The plaintiff took the contention that he was not the tenant. It was found that jurisdiction of the Civil Court was not barred.

34. In *Raja Ram and another v. Raghubir Singh and another* (in Civil Writ No. 1288 of 1967, decided on 29.5.1970), a learned Single Judge of the Punjab and Haryana High Court, followed *Magiti Sasamal* (supra) and took the view that the existence of relationship of landlord and tenant being in dispute, the Revenue Court should stay its hands. It was found that the dispute, in the first instance, must be decided by a Civil Court. If the relationship was found to exist of landlord and tenant, the matter should be returned for decision by the Revenue Court.

35. In Khazan Singh another v. Dalip Singh and another (in L.P.A. No. 623 of 1968, decided on 15.07.1969), a Division Bench of the Punjab and Haryana High Court, found that it is open to the Civil Court to go into the question as to whether the conditions required to be established before the Assistant Collector could exercise power under Section 18 of the Act, existed or not.

Section 18, as already noticed, conferred right on the tenant to seek purchase of the land from the land owner. The Court repelled the contention based on Section 25 of the Act, which was pressed by the tenant that the Suit was not maintainable. The argument, which was advanced by the landlord was, when the matters relevant to Section 18 were in dispute, bar under Section 25, would not apply.

36. In this context, it is necessary to notice the reasoning employed in the majority Judgment and also the view taken by the learned Chief Justice, who authored the dissenting view, in Amar Singh and others v. Dalip[9] (in R.S.A. No. 1821 and 1822 of 1978, decided on 12.03.1981) which was considered by this Court in 1987 (4) SCC 410 RICHPAL SINGH (supra). We notice the following statement from the judgment forming the majority view:

> "12. The question which then remains to be decided is as to whether the Revenue Court or Rent Controller has been invested with the jurisdiction under the Punjab Tenancy Act or the East Punjab Urban Rent Restriction Act, as the case may be, to decide the question of relationship of landlord and tenant or they are entitled incidentally to go into this matter for exercising the jurisdiction expressly invested in them under the said Acts. A perusal of section 77 of the Punjab Tenancy Act would show that the Revenue Court has been invested with the jurisdiction to decide certain dispute between the landlord and tenant which necessarily means that the existence of relationship of landlord and tenant between the parties is a condition precedent before any matter specified therein can be taken cognizance of by a Revenue Court. There is no provision in whole of the section which authorises the Revenue Court to pass a decree regarding the relationship of the parties. It is, therefore, obvious that the Revenue Court is only entitled to pronounce on the relationship between the parties for the purposes of deciding

[9](1981) ILR 3 P&H 582

disputes within its cognizance enumerated in that section and the Legislature has not conferred any jurisdiction on the Revenue Court to pronounce finally on the jurisdictional facts, i.e., the existence of the relationship of landlord and tenant between the parties. The reason for not doing so is also not far to seek. The determination of the status of the parties or a question of title between them may involve very intricate questions of civil law. For example, the status of the landlord may depend on the proof- and validity of adoption or a will. Nobody can even suggest that the Revenue Court has jurisdiction to pronounce on the validity of adoption or a will or that such a decision could be final and binding on the parties. If that is so, then it has to be ruled that the Revenue Court has no jurisdiction to pronounce finally on the question of status of the parties or any other question of title because no distinction can be made between a simple question of title and question of title which involve intricate and complicated questions of law so far as the extent of jurisdiction is concerned. Further more, not a single decision has been cited at the bar wherein it may have been ruled that the decision of the Revenue Court under the, Punjab Tenancy Act on the question of title or status of the parties is final, and not open to challenge in a civil suit. On the contrary, as early as the year 1935, a Division Bench of the Lahore High Court in Mt. Harnam Kaur v. Narain Singh and others, MANU/LA/0285/1935: AIR 1935 Lah. 739 while interpreting the scope of the jurisdiction of the Revenue Court took the view that where a revenue suit is instituted for ejecting the tenants and this is the only jurisdiction exclusively vested in the Revenue Courts, that Court cannot determine the question of title in that case and its decision, therefore cannot operate so as to prevent the civil Courts from entertaining the subsequent suit which involves the question of title. This view has held the field for all these years and its correctness has never been doubted in any decision so far. A similar view was taken by a Full Bench of the Madras High Court in Pollapalli Venkatarama Rao and others v. Masunuru Verkayya and others, MANU/TN/0343/1954 : AIR 1954 Madras 788 while dealing with the question of exclusive jurisdiction of the Revenue Court under the Madras Estates Land Act (1 of 1908), which is evident from the following passage:—

A "If a particular matter is one which does not fall within the exclusive jurisdiction of the revenue court, then a decision of a revenue court on so much a matter, which might be incidentally given by the revenue court, cannot be binding on the parties in a civil court. One practical test would be to deter ne if that particular matter would not be matter in respect of which the civil court would have jurisdiction. To give an obvious instance, suppose in a suit under section 55 For the grant of a patta inst toted by a person calming to be the adopted son of the ryot who was a pattedar, the, landlord raises a plea that he is not entitled to the patta because his adoption is not valid. It may be that the revenue court would have to summarily go into the question whether the person suing is or is not the validly adopted son of the previous ryot. Can it possibly be said that the finding of the revenue court on the issue of adoption is binding on the parties in a subsequent suit in a civil court in which the validity of the adoption might fall to be decided? There can be no doubt about the answer.

That is because the dispute as to the validity of the adoption is not a dispute in respect of which a revenue court has exclusive jurisdiction. Such a dispute is a matter well within the jurisdiction of a civil court. Therefore, it cannot be within the exclusive jurisdiction of the Revenue Court, and the decision of such a dispute by a revenue court cannot be binding in a civil court."

37. In the dissenting opinion, the learned Chief Justice, on the other hand, formulated four questions, out of which, the second question, was as follows - *"II. If so, whether such a Revenue Court has the jurisdiction to decide the issue of relationship of landlord and tenant, if disputed before it?*" In answering this question, we notice that the court followed the Judgment of this Court under the Delhi Rent Control Act in *Om Prakash Gupta v. Dr. Ratan Singh and another*[10] and it was held as follows:

"38. Coming now to question No. (ii) aforesaid it appears to be now so well-settled by a precedent of the final Court and a string of Division Bench judgments of this Court that it would be wasteful to examine the issue on principle. In Om Parkash Gupta v. Dr. Rattan Singh and an others, 1963 P.L.R. 543. an identical question arose under the rent jurisdiction. It was contended before their

[10](1964) 1 SCR 259

Lordships that in a Tribunal of limited jurisdiction, like the Rent Controller, if the relationship of the landlord and tenant is denied then it has no jurisdiction to adjudicate thereon and must stay its hands forthwith. Categorically repelling the same it was observed as follows:—

> ".....If a person moves a Controller for eviction of a person on the ground that he is a tenant who had, by his acts, or omissions, made himself liable to be evicted on any one of the grounds for eviction, and if the tenant denies that the plaintiff is the landlord, the Controller has to decide the question whether there was a relationship of landlord and tenant. If the Controller decides that there is no such relationship the proceeding has to be terminated, without deciding the main question in controversy namely, the question of eviction. If on the other hand, the Controller comes to the opposite conclusion and holds that the person seeking eviction was the landlord and the person in possession was the tenant the proceedings have to go on. Under section 15(4) of the Act the Controller is authorised to decide the question whether the claimant was entitled to an order for payment of rent, and if there is a dispute as to the person or persons to whom the rent is payable, he may direct the tenant to deposit with him the amount payable until the decision of the question as to who is entitled to that payment."

and again

> ".....The Act proceeds on the assumption that there is such a relationship. If the relationship is denied, the authorities under the Act have to determine that question also because a simple denial of the relationship cannot oust the jurisdiction of the tribunals under the Act. True, they are tribunals of limited jurisdiction the scope of their power and authority being limited by the provisions of the Statute. But a simple denial of the relationship either by the alleged landlord or by the alleged tenant would not have the effect of oust-ting the jurisdiction of the authorities under the Act, because the simplest thing in the world would for the party interested to block the proceedings under the Act to deny the relationship of landlord and tenant. The tribunals under the Act being creatures of the Statute have limited jurisdiction and have to function within the four corners of the Statute creating them. But within the provisions of the

A Act, they are tribunals of exclusive jurisdiction and their orders are final and not liable to be questioned in collateral proceedings, like a separate suit or application in execution proceedings."

The enunciation of the law aforesaid appears to me as categoric in laying down that even a persona designate, like the Rent Controller (see Messrs Pitmans's Shorthand Accadamy v. M/s. B. Lila Ram and sons) has the fullest jurisdiction to decide the question of the relationship of landlord and tenant when it is raised before it. That view has been unreservedly followed in this Court in a series of Division Bench decisions which at this stage may only be noticed chronologically, that it, Muni Lal v. Chandu Lal, 1968 PLR 473; Ambala Bus Syndicate (P) Ltd. v. M/s. Indra Motors Kurali, 1968 PLR 650 and J.G. Kohli v. Financial Commissioner Haryana and another, 1975 Rent Control Journal 689. In passing it may be noticed that some doubts about the correctness of the view in the aforesaid judgments was raised by a learned Single Judge which was considered in depth and the earlier view was reaffirmed afresh in the recent Division Bench judgment in Balbahadar and others v. Hindi Sahitya Sadhna, 1980 (1) Rent Control Journal 376, to which I was a party."

38. We must notice that the learned Chief Justice, in the dissenting opinion, was of the view that even the dispute relating to existence of the landlord-tenant relationship could be decided by a Revenue Court. In fact, this Court, in *Om Prakash* (supra), deals with a situation, whereby a simple denial of the landlord-tenant relationship, the proceedings under the Rent Act would be blocked.

39. However, as already noticed, this Court, in the decision reported in *Richpal Singh and others* (supra), upheld the view of the majority. The dissenting view, which was essentially premised on *Om Prakash* (supra), was not approved.

40. Though, the question arose in the context of the contention as to whether the matter was *res judicata*, this Court went on to hold, in paragraph 14, which we have already adverted to, that when the nature of relationship between landlord and tenant was in dispute, the Revenue Court, under the Tenancy Act, has no jurisdiction.

41. In paragraph-15, the Court proceeded to reject the contention of the finding being *res judicata*. The question was whether the Revenue Court could go into the question, whether the respondent therein was a

tenant or mortgagee. It was found that the Revenue Court could not do so. The Judgment in *Richpal Singh* (supra) was decided after considering the Judgment in *Om Prakash* (supra), which took the view that the Rent Control Court's power could not be frustrated by mere taking of the plea disputing the landlord-tenant relationship.

42. In this regard, we have noticed, the view of the Judges in the Majority Judgment. The Majority Judgment proceeded on the basis that there was no provision in Section 77 of the Tenancy Act, which authorised the Revenue Court to pass a Decree regarding the relationship of the party. However, it has also pronounced that the Revenue Court was entitled to pronounce on the relationship for the purpose of deciding the dispute within its jurisdiction. But it was not conferred with power to finally decide on the same. The dispute relating to landlord-tenant relationship can arise in various circumstances, as noticed in the Majority Judgment.

43. Therefore, it is not, as if, if there is indisputable material or binding admission and, which, without raising any debatable dispute at all, established the landlord-tenant relationship, the Revenue Court cannot decide the matter, which it is ordained to decide as part of its duty to decide the case for eviction, *inter alia*. However, what has been laid down is that, the Civil Court would continue to have jurisdiction to finally pronounce on a question of landlord-tenant relationship despite the bar under Section 77(3) of the Tenancy Act.

44. It is, at this juncture, relevant to notice Section 77(3) of the Tenancy Act:

> "77(3) The following suits shall be instituted in, and heard and determined by Revenue Courts and not other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted:"
>
> Procedure where revenue matter is raised in a Civil Court.
>
> Provided that-
>
> (1) where in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by Order VII, rule 10, Civil Procedure Code and return the plain for presentation to the Collector;

A (2) on the plaint being presented to the Collector, the Collector shall proceed to hear and determine the suit where the value thereof exceeds Rs. 1,000 or the matter involved is of the nature mentioned in section 77 (3). First Group of the Punjab Tenancy Act, 1887, and in other cases may send the suit to an Assistant Collector of the first grade for decision.

B 45. We are called upon to decide on the ambit of the bar under Section 25 of the Act of 1953. Can it be argued that the bar under Section 25 is far more rigorous and exhaustive? Would it be said that the bar will operate, even in a situation, where the landlord-tenant relationship is disputed in a proceeding under Section 14A of the Act?

C 46. In this regard Section 14A of the Act provides that the Assistant Collector is to proceed as provided for in sub section 2 of Section 10 of the Act and the provisions of sub section 3 of Section 10 was to apply in relation to such application. There is a proviso with which we are not concerned. Section 10 must therefore be scanned. Section 10 (2) and 10 (3) reads as follows: -

D "Section 10. Restoration of tenant ejected after the 15th of August, 1947 -

(2) On receipt of an application the Assistant Collector shall, after giving to theparties notice in writing and a reasonable opportunity to be heard, determine the dispute summarily, and shall keep a

E memorandum of evidence and a gist of his final order with brief reasons therefor.

(3) When an application has been made, any proceedings in relation to the same matter pending in any other court or before any other authority shall be stayed on receipt of information by that court or

F authority from such Assistant Collector of the fact of having received the application and all such proceedings in a court or before any authority shall lapse when the dispute has been determined by the Assistant Collector acting under this Act.

47. Section 10 (2) declares that on the receipt of an application the Assistant Collector after giving to the parties notice in writing and

G the reasonable opportunity to be heard determine the dispute summarily and shall keep a memorandum of evidence and a gist of his final order with brief reasons therefor. Section 10 (3) on the other hand providesthat when an application has been made which in the context of Section 14A must be read as an application under Section 14A, any proceeding in relation to the same matter pending in any other court or before any

H

other authority shall be stayed on receipt of information by that court or authority from the Assistant Collector that he has received an application under Section 14A. The effect of Section 10 (3) further would be that all proceedings in a court or before any authority shall lapse when the dispute has been determined by the Assistant Collector acting under the Act.

48. There are two aspects which emerge. The first aspect is that the Assistant Collector acting under Section 14A read with Section 10 (2) must given a reasonable opportunity to the tenant and determine the dispute summarily. This is an important pointer to the nature of the power which is exercised by the Assistant Collector. We must bear in mind the principle which has been noticed by this courtin MAGITI SASAMAL (supra). In a case of a dispute raised by the tenant about the very existence of the landlord-tenant relationship, in a provision which contemplates evicting a person who is the tenant, the duty to render a summary decision appears incongruous with the imperative need for the authority to the able to unravel the many dimensions of a dispute which is genuinely raised by the tenant about there being a landlord-tenant relationship. In other words what is to be rendered is a summary decision and we would neither be doing justice to the nature of the power enjoyed by the Assistant Collector as also the right of a party to seek redress in a Civil Court otherwise, unless the power of the Civil Court is preserved.

49. The other aspect no doubt which emerges is Section 10 (3) which contemplates proceedings in relation to the same matter in any other court or authority being stayed, when such court or authority is informed by the Assistant Collector of having received an application under Section 14A read with Section 10. The law giver has however provided that the Assistant Collector must proceed with the application but determine the dispute summarily. Upon the dispute being determined by the Assistant Collector the proceedings which were stayed by the courtor any other authority would lapse. This sub section gives the impression that the powers of the Assistant Collector are meant to be exhaustive.

50. We would hold the true effect of Section 10 (2) and (3) read with Section 14A is as follows. An application for ejectment of a tenant is to be made before the Assistant Collector under Section 14A. Such an application is to be decided after giving notice and it is to be decided summarily. Since the exclusive power to decide the application to evict the tenant has been conferred on the Assistant Collector, the law giver has further contemplated that after receipt of such an application by the Assistant Collector no other court or authority is to proceed with 'any

A case relating to the same matter' upon being informed by the Assistant Collector of the receipt of the application under Section 14A. What is more such proceeding is to be lapseafter the determination of the dispute by the Assistant Collector. The law giver no doubt does contemplate an exclusive and expeditious remedy for the landlord to seek eviction brooking no over lapping of jurisdiction by exercise of power by any
B othercourt or authority on a parallel basis. However, this provision cannot mean that when the very existence landlord-tenant relationship is brought under a cloud by the tenant raising a dispute then the very premise on which the exclusive jurisdiction conferred on the Assistant Collector is not overturned. In other words, the law giver has proceeded on the basis
C that the Assistant Collector is clothed with the power to decide a matter relating to eviction in a summary fashion. This would be inconsistent with scenario where the very existence of the landlord-tenant relationship is disputed. The law giverin other words proceeds on an assumption that the application made by the landlord is against a person who is indeed the tenant.
D

51. We will however proceed on the basis that what is contemplated is that during the pendency of the proceeding before the Assistant Collector even a suit in a civil court where the title of the landlord is questioned or in other words there is a challenge thrown to the very existence of the landlord-tenant relationship is not permitted. Even in
E such a scenario after the conclusion of the proceeding, in the light of the decisions of this court starting with MAGITI SASAMAL (supra) RAJA DURGA SINGH (supra) AND RICHPAL SINGH (supra), would apply and the bar under Section 25 would not available. The Civil Court would have the power in a case where without it being a frivolous challenge to
F the landlord tenant-relationship, in a genuine dispute relating to landlord-tenant relationship, the orders passed by the authorities under the Act can be found to be null and void for the reason that transgressing the power conferred, the authorities proceed to decide the matter, (which again it must be remembered under Section 10 (2) is to be a summary decision) which is the vexed issue relating to the very existence of the
G landlord-tenant relationship.

52. The words used in Section 25 of the Act, as already noticed, is that except in accordance with the provisions of the Act, the validity of any proceeding or Order, taken or made under the Act, cannot be questioned in any Court or before any other Authority. In the dissenting
H opinion, Justice R.S. Sarkaria, in *Amar Singh and another (supra)*,

has explained the scope of the expression "*except in accordance with the provisions of the Act",* with reference to Section 24 of the Act. In other words, an Order passed under Section 14A, could be challenged by way of an Appeal, Review and Revision, as provided in the Tenancy Act, adverted to in Section 24 of the Act. This explained, the question perseveres, however, as to whether the validity of proceeding or Order passed, is beyond challenge in a Civil Court, under circumstances analogous to that obtaining, with reference to a proceeding under Section 77 of the Tenancy Act. In other words, Section 77 of the Tenancy Act, *inter alia,* provided for seeking eviction of a tenant before the Revenue Officer. Section 14A of the Act, similarly, confers powers upon the Revenue Officer, to entertain an application for evicting a tenant.

53. The principles relating to exclusion of Civil Court's jurisdiction are well-settled. Ouster of the jurisdiction of the Civil Court is not readily inferred. In the scheme of the Tenancy Act also, an Order under Section 77 could be subjected to Appeal, Review and Revision, as provided in the Act. Section 77(3) of the Tenancy Act, purported to confer exclusive power on the Revenue Court to decide certain disputes and ousted jurisdiction of courts. This included the proceeding to evict the tenant. In other words, Civil Court could not entertain the application to evict a tenant. It is in this statutory framework that this Court has stated the view that if a landlord-tenant relationship is disputed, despite the exclusive jurisdiction conferred on the Revenue Court, to even Order eviction of a tenant, the Civil Court would still retain jurisdiction in a case where there is a dispute relating to landlord-tenant relationship. The Act was enacted in 1953. As noticed by us, Section 14A of the Act, provided for the eviction of a tenant notwithstanding anything contained in any other law. Therefore, apart from the fact that it became an exhaustive catalogue of circumstances, entitling the landlord to launch proceedings for eviction and also further designating the Statutory Authority, before which, it could be filed, it provided for a bar to challenge the validity of the orders passed, except by way of the remedies provided under the Tenancy Act.There would not be any justification for revisiting the principle laid down that when the relationship between landlord and tenant is contested, the Civil Court continue to have the jurisdiction despite the bar under Section 25 of the Act. We see no reason to hold that the validity of the Order passed by the Assistant Collector, as may be affirmed in Appeal, Review or Revision, cannot be questioned in a Civil Court, if the expression "validity" is conflated with legality. In other words, if an Order is illegal,

A it would be invalid. The illegality of an Order can arise out of various causes. An Order may be illegal, and therefore, invalid, on the ground that the Author of the Order, in this case, the Authorities designated under Section 14A, did not have the power to decide the issue.We are in this case concerned with illegality due to absence of power. We are not called upon to decide the position, where the Authority, under the Act, violates the fundamental procedure relating to natural justice and the Civil Court is invited to sit in Judgment over the same. What we find, is that, the expression "validity of the decision or the Order" in Section 25 of the Act, would not include a case where, despite a dispute projected,that there was no landlord-tenant relationship, the Authority decides the said issue in the course of the Order of Eviction, under Section 14A, after brushing aside the tenant's objection relating to his position, *viz*., that he is not a tenant. In such a situation, the validity is tied-up with the fundamental aspect of absence of power of the Authority to decide on the question of landlord-tenant relationship. We must clarify, therefore, that the validity of the orders under Section 14A is open to scrutiny in a Civil Court, in a situation, when the tenant denies and disputes the case of the landlord that there is a landlord-tenant relationship. We must, however, further hold that a mere plea by the tenant, should not lead, without anything more, to render the Authorities helpless and bereft of power to order eviction. In a situation, where, the Authority finds the plea of the tenant to be completely frivolous and mere attempt at blocking the proceedings, the validity enacted under Section 25, cannot be diluted. The position must be understood as that the power to decide, cannot be assigned to the Authorities under the Act, of the existence of the landlord-tenant relationship, as noted hereinbefore.

54. In the facts of this case, we have noticed the nature of the contention. Even the case of the appellants is that of failure to pay rent by the respondent-tenant.The tenant claims to be a tenant under the Mandir, which has been found to be the owner of the property. Appellants claim under an assignment made by the Mahant, who has been found to be without Authority to convey any right to the appellants.

55. In such circumstances, we would find that the contention raised by the appellants is meritless and the Appeal will stand dismissed. We, however, direct the parties to bear their own costs.

Nidhi Jain Appeal dismissed.