

**(1978) 02 AHC CK 0041**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No's. 4292 of 1969 connected with 302 of 1970

Bhagwati Singh

APPELLANT

Vs

The Board of Revenue, Allahabad and Others

RESPONDENT

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**Date of Decision :** 01-02-1978

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 36, 11  
Uttar Pradesh Tenancy (Amendment) Act, 1947 — Section 27(1), 27(3), 27(5), 47  
Uttar Pradesh Tenancy Act, 1939 — Section 180, 180(2), 3(11)  
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202

**Citation :** AIR 1978 All 323

**Hon'ble Judges :** M.P. Mehrotra, J; M.N. Shukla, J; K.C. Agarwal, J

**Bench :** Full Bench

**Advocate :** Sripat Narain Singh, for the Appellant; S.C.N. Lal and K.B. Garg, for the Respondent

**Final Decision :** Dismissed

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## Judgement

M.N. Shukla, J.—I had the advantage of perusing the opinions written by my learned brothers and after the exhaustive discussion of the subject in those two elaborate judgments It has become conveniently feasible for me to record my own views in the case with considerable brevity. In my opinion the writ petitions deserve to be dismissed with costs. I would only like to add with respect that though I agree with the ultimate conclusions of my learned brothers I am unable to agree with the opinion of Agrawal, J. on only one aspect of the case, namely, that respondents Nos, 4 to 9 had acquired the rights of hereditary tenants. I would rather subscribe to the contrary opinion of Mehrotra, J. and Gopi Nath, J, (in his referring order).

2. In a nutshell the dispute in this case arose between the petitioner who was a sub-tenant Inducted by the Zamindar after obtaining a decree for ejectment u/s 180 of the U. P. Tenancy Act and respondents Nos. 4 to 9" who were originally trespassers (defendants in the ejectment suit) but later persons reinstated u/s

27 (1) (c) of the U. P. Tenancy (Amendment) Act, 1947 (Act No. X of 1947) hereinafter referred to as the amending Act, After the reinstatement respondents Nos. 4 to 9 filed a suit for ejectment of the petitioner u/s 202 of the U. P. Zamindari Abolition and Land Reforms Act, 1951 (hereinafter referred as U. P. Act No. 1 of 1951), The suit was eventually decreed on 1st January, 1968 and the decree was affirmed by the Additional Commissioner, Thereafter these two writ petitions were filed.

3. The first point canvassed by the learned counsel for the petitioner was that the suits u/s 202 of U. P. Act No. 1 of 1951 by respondents Nos. 4 to 9 were not maintainable, According to his submission such suits could be brought only by a "land-holder" and only a Bhumidhar or Sirdar could be a "land-holder" under the scheme of U. P. Act No. 1 of 1951. Section 202 of U. P. Act No. 1 so far as is material reads as under a-

"202. Procedure of ejectment of asami.-- Without prejudice to the provisions of Section 338, an asami shall be liable to ejectment from his holding on the suit of the Gaon Sabha or the land-holder, as the case may be, on the ground or grounds-

(a) mentioned in Sections 167, 191 or 206;

(b) that he-

(i) belongs to any of the classes mentioned In Clauses (a), (b), (c), (e), (g) or (i) of Sub-section (1) of Section 21, or Sub-section (2) of the said section, or in Clause (c) or (d) of Section 133, or

(ii) has acquired the rights of an asami under the Uttar Pradesh Land Reforms (Supplementary) Act, 1952, and that he holds the land from year to year or for a period which has expired or will expire before the end of the current agricultural year?

(c) that he belongs to the class mentioned in clause (d) of Sub-section (1) of Section 21 and the mortgage has been satisfied or the amount owing under the mortgage has, whether or not it has become payable thereunder, been deposited in court." It is manifest that in the context of the present case It was only a "land-holder" who was competent to file a suit for ejectment u/s 202 of U. P. Act No. 1 of 1951, To further elucidate the matter it is necessary to ascertain the meaning of the term "land-holder". Section 3 (26) of the U. P. Zamindari Abolition and Land Reforms Act provides that the expression "land-holder" not defined under that Act shall have the meaning assigned to It in the U. P. Tenancy Act, 1939. The definition of "land-holder" In the U. P. Tenancy Act was as follows :--

"landholder" means the person to whom rent is, or, but for a contract express or implied, would be payable, but except in Chap. VII and Chap. XIII does not include an assignee of rent or a person who has lost the proprietary or other interest by virtue of which rent became payable to him." As the definition

indicates, the test of the character of a land-holder" Is payability of rent to him. This test Is completely fulfilled by the character of a reinstated person as described In the proviso to Sub-section (3) of Section 27 of the amending Act. It provides that in the event of reinstatement the rent payable by the applicant to the land-holder shall be the rent payable by him for such land before his ejectment or the amount cal-ciliated according to the circle rates, whichever is less, and the rent payable to the applicant by the person declared as sub-tenant shall be the amount payable by such person to the land-holder immediately before the declaration or twelve and a half per cent over and above the amount calculated according to the circle rates applicable to hereditary tenants, whichever is higher.

Thus, the proviso postulates two Important consequences. In the first place, it says that any person inducted by the original land holder on 1-9-1946 shall be declared to be the sub-tenant of the person reinstated u/s 27 (3) of the amending Act. Secondly, it enjoins that the rent would be payable by the subtenant (the person let in by the Zamin-dar) to the person reinstated. It, therefore, follows that the reinstated person is a "land-holder" qua the person inducted by the "land-holder". Thus, there can be no doubt that respondents Nos. 4 to 9 were "land-holders" vis-a-vis the petitioner and were as such entitled to institute a suit for ejectment u/s 202 of U. P. Act No. 1 of 1951.

4. Sri Sripat Narain Singh, learned counsel for the petitioner, however, sought to add one more condition to the right of filing a suit u/s 202 of U. P. Act No. 1 of 1951. He submitted that only a Bhumidhar or Sirdar could be a "land-holder" and therefore in order to establish the right of respondents Nos. 4 to 9 to file a suit u/s 202 it was also necessary to demonstrate that they were En the circumstances of the case "Sirdars". I am unable to find any provision either in U. P. Act, Act No. I of 1951" or in the amending Act of 1947 to buttress such proposition. The sole test of being a "land-holder", according to the definition of the term already quoted is the eligibility to receive rent and since the proviso to Sub-section (3) of Section 27 of the amending Act shows unmistakably that the reinstated persons are entitled to the payment of rent by the sub-tenant inducted, they must be held to be "landholders" and there is no justification for reading into the definition of "land-holder" anything which is not provided therein. Therefore, I find absolutely no justification for importing any such other requirement as suggested by the learned counsel for the petitioner namely, that only a Bhumidhar or Sirdar can be deemed to be a "land-holder".

5. In this view of the matter it is in fact not necessary at all to go into the alternative question as to whether the respondents Nos. 4 to 9 had also become Sirdars so as to satisfy the second, and, if I may say so, the artificial requirement postulated by the learned counsel for the petitioner, But since that limb of the argument poses a somewhat important question of law which has been the subject-matter of several decided cases which appear to have been not always interpreted rightly and with precision, It is worthwhile adverting to this aspect of

the case also. There is no doubt that If respondents Nos. 4 to 9 had become hereditary tenants under the U. P. Tenancy Act, they would later become Adhivasis and thereafter Sirdars under U. P. Act No. 1 of 1951. But in my opinion the central fact which must be borne in mind in this connection is that Section 180 (2) of the U. P. Tenancy Act is the fulcrum which controls the entire machinery relating to the acquisition of the status of a hereditary tenant. The contention that respondents Nos. 4 to 9 had become hereditary tenants on the facts of the instant case can be compatible only with an amendment in the language of Sub-section (2) of Section 180 otherwise there is no justification for importing into Sub-section (5) of Section 27 of the amending Act something which is not enacted by the Legislature. In the language of these two important provisions as they exist it is impossible to reach such a conclusion as the learned counsel for the petitioner suggests. Section 180 (2) runs as follows :--

"If no suit is brought under this section, or if a decree obtained under this section, is not executed, the person in possession shall become a hereditary tenant of such plot, or If such person Is a co-sharer, the shall become a Khud-kasht-holder, on the expiry of the period of limitation prescribed for such suit or for the execution of such decree, as the case may be."

On a bare reading of the plain language of the above provision it becomes evident that the accrual of the rights of hereditary tenant Is thwarted by the mere institution of a suit for ejectment against a trespasser within the period of limitation and not by his actual dispossession. The fallacy appears to be rather common and wide-spread that the actual dispossession must also take place within the period of limitation otherwise hereditary rights shall accrue, There is nothing in the phraseology of Sub-section (2) of Section 180 of the U. P. Tenancy Act to bear any such construction. It is to be noted that notwithstanding the amendments effected by U. P. Act No. X of 1947, Section 180 of the U. P. Tenancy Act has not suffered any change. This central provision has stood firm like a rock in the midst of legislative vicissitudes. Neither this section has been amended nor is there anything in Sub-section (5) of Section 27 of the amending Act which may destroy the effect, of the former or override its basic provision.

The only qualification which has been added by Section 32 of the amending Act in this context is that "two years" limitation has been substituted for three years rule which initially applied to a suit u/s 180 of the U. P. Tenancy Act. Thus, the erstwhile rule that no hereditary rights would accrue if a suit is brought within three years of dispossession has only to be modified to this extent that such a suit must be brought within two years of the trespass. The facts of the present case clearly reveal that the suits u/s 180 had been brought within two years of limitation and hence the question of the trespassers (respondents Nos. 4 to 9) becoming hereditary tenants was cut at the very root. The trespass had been committed on 12-12-1939 and two years limitation computed from. 1st July, 1940 would run out on 30th June, 1942. But the suit u/s 180 has been filed on 7th February, 1942 and decreed on 28th March, 1943 and in execution

possession had also been obtained by the land-holder on 21st May, 1943,

On a correct interpretation of Section 180 (2), therefore, the contention that respondents Nos. 4 to 9 became hereditary tenants must be ruled out. There is nothing in Sub-section (5) of Section 27 of the amending Act which militates against this provision. The result of reducing the period of limitation to two years by Section 32 of the amending Act is merely this that if a trespasser had completed two years at the time when the suit for ejectment u/s 180 was brought against him he would be entitled to retain possession. Here again the crucial date is the date of the filing of the suit and not the date of actual ejectment. Sub-section (5) of Section 27 of the amending Act is in the following terms a

"On reinstatement, the right and liabilities of the applicant existing on the date of his ejectment or dispossession in respect of the holding or any part thereof from which he was ejected .or dispossessed, shall revive subject to the proviso to Sub-section (3)."

6. The above section emphasises the fact that on reinstatement the rights and liabilities of the trespasser existing on the date of his ejectment or dispossession shall revive subject to the proviso to Sub-section (3). Unquestionably the status of such a person on the date of his ejectment was that of a trespasser. This status could be obviated only if the suit had not been brought within three years formerly and latterly two years from the date of trespass. In case the suit had been filed within this period the inescapable result would be that a trespasser would remain liable to, ejectment as a trespasser and cannot in any manner improve his status or convert it from that of trespasser to that of a tenant. Improvement in status, or what is only the other side of the coin, an avoidance of the status of a trespasser can be possible only in one situation, namely, that the suit u/s 180 of the U. P. Tenancy Act had not been filed within the period of limitation.

Therefore, the contents of Sub-section (5) of Section 27 of the amending Act. actually stem from Section 180 (2) of the U. P. Tenancy Act and ultimately we have to fall back upon the latter provision in order to interpret the former. It would not be wrong to assert that Sub-section (5) of Section 27 of the amending Act logically and substantially reinforces the primary provisions of Section 180 (2) of the U. P. Tenancy Act. I am inclined to adopt the following observations of Gopi Nath, J. on this point made in his referring order :

"A trespasser can become a hereditary tenant only if no suit against him is filed within the prescribed period or a decree obtained is not executed within time. What is therefore to be seen in the instant case is whether a suit was filed within two years and a decree executed within time. As seen above, the suit was filed within two years and the decree executed and possession obtained within one year of the decree. Respondents 4 to 9 consequently did not mature hereditary rights."

In my opinion the cumulative effect of Section 32 and Sub-section (5) of Section 27 of the amending Act was most succinctly summed up in the Division Bench case of Sri Ram Pathak v. Board of Revenue, 1956 All LJ 343, The following observations were made at p. 344 :

"It may be noted, however, that by Section 32 of Act X of 1947 the period of limitation for the ejectment of a trespasser was reduced from three to two years and this may provide the key for understanding the anomaly created by Section 27. It appears to us that the effect of Subsection (5) of Section 27 is that if a suit for the ejectment of the trespasser, who has been reinstated to his land u/s 27, if filed, the period of limitation, that will now be calculated, is not three years, as it was when the earlier suit for ejectment was filed but two years, as it has been laid down in Act X of 1947. Therefore, those trespassers, who had completed two years of possession before they were ejected under the law as it prevailed before the commencement of Act X of 1947, would be entitled to retain possession after their reinstatement; but those trespassers, who had not completed even two years at the time when they were previously ejected, would be liable to be ejected upon a suit being filed within two years of their reinstatement."

On a careful reading of the case law on the subject including the later decisions, I, however, feel that the above dictum in Sri Ram Pathak's case still provides the guiding light for interpreting the law relating to the right of a trespasser to retain possession by virtue of Sub-section (5) of Section 27 of the amending Act even after the institution of a suit for ejectment. The main principle in Sri Ram Pathak's case was reiterated and affirmed in the Full Bench case of Kedar Nath Vs. Jamuna and Another, . The Full Bench overruled the decision in Sri Ram Pathak's case (supra) only to the extent that while in the earlier Division Bench it was held that a second suit for ejectment was barred, the Full Bench ruled that the very decree passed in the previous suit could be executed. Barring this variation, the core of the decision in Sri Ram Pathak's case (supra) in my humble opinion remains intact and still governs the legal rights of a trespasser reinstated under the amending Act.

7. Section 27 (5) of the amending Act speaks as it were through the mouth of Section 180 (2) of the U. P. Tenancy Act and the mistake occurs when we try to make the former independently articulate. In order to appreciate this legal position two, seemingly contrary and inconsistent features must be clarified. In the first place, as I have already pointed out, the words "on the date of his ejectment or dispossession" occurring in Sub-section (5) of Section 27 of the amending Act must be understood in the sense of the date of institution of a suit for ejectment inasmuch as the rights and liabilities of the trespasser on the date of his ejectment or dispossession would be determined by the fact as to whether the suit for his ejectment was filed within the period of limitation applicable on that date. Proceedings u/s 27 of the amending Act are really in respect of a right or obligation or liability acquired or incurred, under the U. P. Tenancy Act, 1939. It cannot be seriously contended that even if a suit is brought within the period

of limitation or if the execution of the decree is commenced within limitation, the trespasser would acquire the rights of a hereditary tenant merely because the suit has not been decided within limitation or the execution is not completed within the period of limitation. Such argument would be manifestly untenable. The interpretation that I am inclined to place on Sub-section (5) of Section 27 of the amending Act is fortified by the observations of Oak, J. who speaking for the Full Bench in Kedar Nath's case (1964 All LJ 442) (supra) remarked in paragraph 10 as follows :--

"Under Sub-section (5) of Section 27 of the 1947 Act, on reinstatement, the rights and liabilities of the respondents existing on the date of their ejectment in respect of the land revived. One can hardly speak of rights and liabilities of a person after his ejectment. In order to make Sub-s, (5) effective, the expression "existing on the date of his ejectment" should be understood in the sense of "existing immediately before the date of his ejectment".

In the second place, a wrong impression may sometimes be gathered from the following observations in Sri Ram Pathak's case (1956 All LJ 343) (supra) at p. 344 :

"Therefore those trespassers, who had completed two years of possession before they were ejected under the law as it prevailed before the commencement of Act X of 1947, would be entitled to retain possession after their reinstatement,

On a proper construction it would be apparent that what the Bench really meant to lay down was not to record the date of actual dispossession as the material date but the date of filing of a suit in accordance with the provisions of Section 180 of U. P. Tenancy Act. That is the necessary implication of the word "ejected" used in the above passage and it must take its colour from the context in which it is employed. To interpret it literally would be to miss the real implication and ratio of the case. This is borne out by the use of the words "under the law" immediately after ejected. The entire comment of Gopi Nath, J. on the passage extracted above bears citation. Says he in the referring order :--

"What has to be considered is the effect of "they were ejected under the law as it prevailed before the commencement of Act X of 1947." The law with regard to ejectment of a trespasser before the commencement of Act X of 1947 was the law as contained in Section 180 of the U. P. Tenancy Act. The period of limitation for the suit was three years which was substituted by two years by Act X of 1947. The completion of two years of possession before they were ejected would in my opinion mean completion of two years of adverse possession, a suit u/s 180 having not been filed within that period. Learned counsel for the respondents has laid great emphasis on the word "ejected" and says that it cannot be equated with a suit for ejectment, It is true that the Bench used the word ejected and not a suit for ejectment. But the word ejected is followed by the expression under the law. Ejected under the law would mean by means of a suit instituted u/s 180." The Full Bench decision reported in Ramesh Chand and

Others Vs. Board of Revenue and Others, is distinguishable on the ground that it dealt with a case where the reinstated person was himself the original hereditary tenant of the holding in suit. Likewise, the latter Full Bench decision reported In Prem Singh and Others Vs. Hukam Singh and Others, was also not a case in which any such controversy as is involved in the present case fell for decision. In that case the reinstated person was not a trespasser ejected u/s 180 of the U. P. Tenancy Act but was an occupancy tenant and he had been ejected under the execution of the decree passed in a suit u/s 171 of the U. P. Tenancy Act.

8. There is yet another notable argument which does not lend support to the contention that the reinstated persons had acquired the rights of hereditary tenants, merely because the amending Act provided a machinery for reinstatement of the ejected trespasser it cannot be said that it had evolved an alchemy for converting a trespasser into a hereditary tenant. A decree obtained u/s 180 of the U. P. Tenancy Act is not completely effaced by the reinstatement of the trespasser u/s 27 of the amending Act. It is only rendered ineffective and can therefore be taken into account in any subsequent proceeding where the rights and liabilities of the trespasser "have to be examined. Thus, in the Full Bench decision of Kedar Nath (1964 All LJ 442) (supra) the validity of the decree obtained in the suit u/s 180 was upheld and the view was expressed that only the execution thereof was affected by Section 27 (5). The following observations of Oak, J. on the point clearly enunciated this dictum (at p. 446) :

"The plaintiff obtained against the defendants a decree for ejectment on 20-8-1940. That decree had not been executed by Sept. 1940. The defendants were liable to be ejected in execution of the decree dated 20-8-1940. That was the respondents' liability in September 1940 ..... Although the decree was executed, that execution, stood annulled as a result of Sub-section (5). of Section 27 of the 1947 Act. On reinstatement of the defendants on 14-11-1950 their status was the same as in September 1940. They remained liable to ejectment in execution of the decree dated 20-8-1940." From the proposition that the earlier decree was valid and what was affected by Sub-section (5) of Section 27 of the amending Act was merely the execution thereof it is a logical corollary that the status of a trespasser cannot be converted into that of a hereditary tenant on the ground that the actual ejectment took place after two years from the date of trespass as in the instant case.

9. Therefore, I come to the conclusion that respondents Nos. 4 to 9 did not acquire the rights of hereditary tenants and did not become Sirdars, although that had no bearing on their right to file a suit u/s 202 of U. P. Act No. 1 of 1951. There is nothing in any of the later decisions to which we have referred which militates against this fundamental proposition of law and I do not think that the doctrine of "stare decisis" can be legitimately invoked in the present case. On other points I am in agreement with the conclusions reached by my learned brothers and it would be futile to repeat the reasons already contained in their judgments.

10. For these reasons I am of the opinion that the writ petitions are liable to be dismissed with costs.

M.P. Mehrotra, J.

11. These two connected writ petitions have been referred to the Full Bench for disposal. The facts in the two petitions are identical except that the petitioners are different and the plots in dispute are also different. The necessary facts have been set out in the referring order of the learned Single Judge and my brother K. C. Agrawal, J. has also re-stated them in his judgment. Therefore, it is not necessary to re-state them here. However, I have found it convenient to arrange the broad developments in the litigation in a chronological sequence which is as under :--

(1) 12-12-1939 : Opposite Parties Nos. 4 to 9 took illegal possession of several plots. By opposite parties Nos. 4 to 9 are meant their predecessors-in-interest also.

(2) 7-2-1942 : Suit u/s 180, U. P. Tenancy Act, 1939 by the landlords.

(3) 28-3-1943 : Decree in the above suit.

(4) 21-5-1943 : Actual ejectment of the opposite parties Nos. 4 to 9 in the execution of the said decree.

(5) June, 1943 : The landlords settled the plots in dispute in each of the writ petitions with the petitioners of the writ petition concerned,

(6) 14-6-1947 : U. P. Tenancy (Amendment) Act 10 of 1947 amending the U. P. Tenancy Act, 1939 came into force.

(7) 1948 : Application by opposite parties Nos. 4 to 9 for reinstatement u/s 27 (1) (c) of the said 1947 Act. The said application was rejected by the trial court.

(8) 28-3-1951 : The said application was in appeal allowed by the Collector. The opposite parties Nos. 4 to 9 were re-instated in the plots in dispute in the two writ petitions and the petitioners in the petitions were declared the sub-tenants of the opposite parties Nos. 4 to 9.

(9) 1954 : Seven connected suits u/s 202 of the U. P. Zamindari Abolition and Land Reforms Act, 1951 were filed by the opposite parties Nos. 4 to 9 against defendants in each separate suit. Two of these seven suits were filed against the respective petitioners of the instant two writ petitions :

(10) 31-1-1955 : Revision against the the aforesaid order of the Collector was allowed by the Board of Revenue and the Collector's order was set aside.

(11) 3-5-1955 : The said suits were dismissed.

(12) 28-9-1955; The writ petition against the said order of the Board of Revenue was allowed by a learned Single Judge of this Court and the Board's order was

set aside, and the said revision was remanded to the Board of Revenue for fresh decision.

(13) 25-3-1957 : Review petitions in the said suits were dismissed.

(14) 1-10-1958 : Special Appeal against the said order of the Single Judge in the writ petition was dismissed.

(15) 25-5-1961 : The aforesaid Revision on remand was dismissed by the Board of Revenue and the Collector's order dated 28-3-1951 became final.

(16) 9-8-1961 : Seven connected suits u/s 202 of the U. P. Act 1 of 1951 were again filed by the opposite parties Nos. 4 to 9 against defendants in each separate suit. Two of these seven suits were filed against the respective petitioners of the instant two writ petitions.

(17) 17-5-1965 : Writ Petition against the Board's aforesaid order dated 25-5-1961 was dismissed by this court.

(18) 1-1-1968 : The said suits were decreed by the trial court by a common judgment.

(19) 2-5-1968 : The Additional Commissioner by a common judgment dismissed the seven connected first appeals against the said trial court's judgment.

(20) 15-10-1969 : The Board of Revenue by a common judgment dismissed two connected second appeals which were filed by the respective petitioners of the instant two petitions. Thereafter these two writ petitions were filed. A learned Single Judge of this Court (the Late Dwi-vedi, J.) referred to a Division Bench the following question :

"Whether the respondents became Adhivasis of the land In dispute under the latter part of Clause (b) of Section 20. Zamindari Abolition and Land Reforms Act ?"

The Division Bench answered the said question in the negative. Thereafter the two petitions were laid before our brother, Gopinath, J. for hearing and he directed that the two petitions should be heard by a larger Bench. Hence, they have been referred to this Full Bench for decision.

12. Sri Sripat Narain Sinsh, learned counsel for the petitioners, contended before us that the courts below were wrong In decreeing the suits u/s 202 filed by the opposite parties Nos, 4 to 9, It will be seen that the suits were decreed by the trial court and the first appeals and the second appeals filed respectively before the first appellate court, the Commissioner, and the second appellate court, the Board of Revenue, were dismissed. Learned counsel has pressed before us three pleas which were the subject-matter of the following three issues framed in the suits in question :

"3. Whether the suit is maintainable u/s 202 of Act No. I of 1951 ?

4, Whether the suit is barred by Section 11 C. P. C. ?

9. Whether the plaintiffs obtained formal Dakhal over the plots in dispute and proceedings u/s 27 of Act 10 of 1947 ? If not. its effect ?"

13. So far as issue No. 3 Is concerned, counsel's contention is that a trespasser cannot be held to be a "landholder" and he cannot file a suit u/s 202 of U. P. Act 1 of 1951. Only a Bhumidhar or a Sirdar can be a "landholder". The said section lays down as follows-

"202. Procedure of ejectment of asami -- Without prejudice to the provisions of Section 338, an asami shall be liable to ejectment from his holding on the suit of the Gaon Sabha or the land-holder, as the case may be, on the ground or grounds-

(a) mentioned in Section 167, 191 or 206 :

(b) that he-

(i) belongs to any of the classes mentioned in Clauses (a), (b), (c), (e). (g), or (i) of Sub-section (1) of Section 21, or Sub-section (2) of the said section, or in clause (c) or (d) of Section 133, or

(ii) has acquired the rights of an asami under the Uttar Pradesh Land Reforms (Supplementary) Act, 1952, and that he holds the land from year to year or for a period which has expired or will expire before the end of the current agricultural year t

(c) that he belongs to the class mentioned in clause (d) of Sub-section (1) of Section 21 and the mortgage has been satisfied or the amount owing under the mortgage has, whether or not it has become payable thereunder, been deposited in court."

14. The aforesaid contention is sought to be met by the plaintiffs-opposite parties Nos, 4 to 9 on two grounds. Firstly, it Is contended that the opposite parties Nos. 4 to 9 must be held to be the "landholders" in view of the provision contained in the proviso to Sub-section (3) of Section 27. Secondly, it is contended that the opposite parties Nos. 4 to 9 were sirdars when they filed the suits. The effect of the said proviso was that the petitioners were declared to be the sub-tenants of the opposite parties Nos, 4 to 9 and rent became payable by the petitioners to the opposite parties Nos. 4 to 9. The proviso further declared that such sub-tenants were liable to be ejected after the expiry of three years from the date of the declaration. A reference is made to the definition of "landholder". In terms of Section 3 (28) of U. P. Act No. 1 of 1951, the definition of the said expression in the U. P. Tenancy Act, 1939 will be applicable for the purposes of U. P. Act 1 of 1951 also. The definition of a "landholder" in U. P, Tenancy Act was as follows :--

"landholder, means the person to whom rent is, or, but for a contract express or implied, would be payable, but except in Chap. VII and Chap. XIII does not

include an assignee of rent or a person who has lost the proprietary or other interest by virtue of which rent became payable to him."

15. It seems to me that in view of the statutory declaration contained in the aforesaid proviso to Section 27 (3) of U. P. Act 10 of 1947 declaring the persons who were subsequently inducted (after the ejectment of the reinstated persons by the landlord) to be the sub-tenants of the reinstated persons and further declaring that the former were liable to pay rents to the latter and were liable to be ejected after a period of three years from the date of the declaration, the opposite parties Nos. 4 to 9 must be treated to be the "landholders" entitled to sue the petitioners for ejectment. On general principles, a sub-tenant can be sued for ejectment by his tenant-in-chief. The landlord cannot directly sue a sub-tenant for the latter's ejectment. He has to sue the tenant-in-chief for ejectment and the sub-tenant is liable to be ejected because he holds his right under the tenant-in-chief.

In the facts of the instant case, the suits u/s 202 were filed by the opposite parties Nos. 4 to 9 against the petitioners. Such suits could not be filed by the landlords because apart from the fact that their rights had become extinct with the abolition of Zamindari, they could not be treated to be the landholders of the petitioners inasmuch as the latter were liable to pay rent to the opposite parties Nos. 4 to 9 and no rent was payable to the landlords from the petitioners. Sri Sripat Narain Singh sought to contend that the suit u/s 202 against his clients could be filed by the Gaon Sabha. It seems to me that this contention is untenable. When there is a landholder, then the suit cannot be filed u/s 202 by the Gaon Sabha.

In the instant case, it is clear that rent was payable by the petitioners to the opposite parties Nos. 4 to 9 and, therefore, the latter were the landholders of the plots in dispute in relation to the petitioners. There will be many other reasons which will show that the Gaon Sabha cannot file suits u/s 202 against the petitioners in respect of those plots but it is not necessary to advert to such other aspects of the matter because, in my opinion, on the Short around that rent was payable by the petitioners to the opposite parties Nos. 4 to 9 on the basis of the relationship of sub-tenancy brought into existence by the statute, the Gaon Sabha is out of the picture and could not institute a suit u/s 202 of U. P. Act 1 of 1951.

This leads to the clear position that in case the suits in question at the instance of the opposite parties Nos. 4 to 9 were to be held as not maintainable u/s 202, then the result will be that the petitioners would not be liable to be ejected even though in terms of the proviso to Section 27 (3) of the U. P. Act 10 of 1947, they were guaranteed an immunity from ejectment for a period of three years only. Such a course will undoubtedly be against the legislative intentions inasmuch as it was not intended that such sub-tenants as the petitioners should be immune from ejectment for all times to come. In this connection attention may be drawn to Section 202 (b) (i). In the said sub-clause, it is clearly laid down that an asami

belonging to the class covered by Section 21 (1) (c) is liable to be ejected on the ground that he belongs to the said class and that he holds the land from year to year or for a period which had expired or will expire before the end of the current agricultural year. Section 21 (1) (c) lays down as follows :--

"21, Non-occupancy tenants, subtenants of grove-lands and tenant's mortgagees to be asamis.--(1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting occupied or held land as-

(c) a sub-tenant referred to in the proviso to Sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act 1947."

(..... shall be deemed to be asami thereof.)

16. These specific provisions make it absolutely clear that a sub-tenant referred to in the proviso to Sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947 is liable to be ejected in a suit u/s 202 of U. P. Act 1 of 1951 after the expiry of a period of 3 years (as the proviso of Section 27 (3) laid down the said period during which he had immunity from ejectment). The only controversy which can be raised is whether such a suit is to be filed by the reinstated persons or by Gaon Sabha. It is also not disputed that in case there is a landholder, then the suit has to be instituted by him and not by the Gaon Sabha. However, the contention is that a trespasser cannot be a landholder and, therefore, he cannot file the suit u/s 202. Counsel suggests that a landholder must belong to the category of the Bhumidhar or the Sirdar. I do not find any warrant for this assumption,

It will be seen that in Section 209, it is clearly laid down that the suit has to be filed by one of the three recognised classes of tenants who are enumerated there, namely, the Bhumidhars, the Sirdars, or the asamis or by the Gaon Sabha but in Section 202, the expression used is "the landholder" and not the Bhumidhar or the Sirdar. This contrast between the two sections is revealing. It clearly shows that the person who seeks to eject an asami u/s 202 need not necessarily be either a Bhumidhar or a Sirdar provided it is found that he is the landholder in relation to the asami. In the definition of the expression "landholder", it is not laid down that he has to belong to one or the other category of tenants. The criterion laid down in the definition is payability of the rent.

It seems to me that on the basis of this criterion, if rent is payable to a person then he is the landholder vis-a-vis the person liable to pay such rent. It is wholly immaterial as to what is the status of, or the rights possessed by, the person to whom rent is payable, A person who has to pay rent is not concerned with the status of, or the nature of the rights possessed by, the person to whom the rent is payable. Such status and the nature of the rights possessed by such a person (to whom the rent is payable) raise issues which have relevance to determine his relationship with his superior title-holder, if any. For example, whether such a

person is the sirdar or a Bhumidhar of a piece of land may be a question of contention between him and some third person. But the person by whom rent is payable is not concerned with such dispute of title,

If by privity of contract or by statute rent is payable by him or but for such contract, express or implied, rent would be payable by him to a person, then the latter is the landholder irrespective of whether his rights and title in the land are in dispute or not in reference to third parties. u/s 116 of the Indian Evidence Act, it is laid down that a person who has been admitted to the tenancy cannot dispute the title of the person admitting him to such tenancy. The section, as such, may not be applicable to the facts of the instant case inasmuch as it can be contended that the petitioners were not admitted as sub-tenants by the opposite parties Nos, 4 to 9, But) I apprehend that the principle of the section will be applicable to the instant case where the petitioners have been declared by the statute to be the subtenants by whom rent is payable to the opposite parties Nos. 4 to 9. Inasmuch as as they are under this statutory liability to pay rents as sub-tenants to the opposite parties Nos. 4 to 9, it is not open to the petitioners to raise questions concerning the nature of the rights enjoyed by the opposite parties Nos. 4 to 9, or their status in law. It is not for the petitioners to contend that the opposite parties Nos. 4 to 9 were originally trespassers and continued to be so when the suits u/s 202 were filed. These questions are wholly irrelevant for the purposes of Section 202 and indeed the petitioners, in law, cannot be allowed to raise such questions in view of the fact that they have been declared by the statute to be the sub-tenants of the opposite parties Nos, 4 to 9, I shall take a concrete case to further elaborate my point. It is possible to think of the trespassers reinstated u/s 27 (3) of the U. P. Act 10 of 1947 not maturing their rights into tenancy rights vis-a-vis the landlords.

Yet, If their sub-tenants have remained in the land for a period of more than three years from the date of the declaration, then the latter would be liable to be ejected u/s 202 by the former even though they have not become tenants of their landlords. Indeed, the landlords may be themselves seeking the ejectment of the reinstated persons but such a controversy between the landlords and such reinstated person will not stand in the way of the latter maintaining a suit for the ejectment of the subtenant u/s 202 in case the period of three years from the date of declaration has expired, It is not necessary that in every case the subsequently inducted persons must be having tenancy rights in relation to their own landlords. In some cases, they may have such rights but in other cases, they may not have tenancy rights. But that circumstance will be of no consequence so far as their suits against the sub-tenants are concerned.

The latter cannot dispute the rights of the former to maintain the suit u/s 202 on the ground that some controversy is pending between the landlords and the former persons touching upon the status of such persons in relation to the landlords. Here attention may be invited to an important aspect of the controversy. Section 27 of the U. P. Act 10 of 1947 provided for the

reinstatement of certain categories of tenants ejected u/s 165 and/or Section 171 and of trespassers ejected u/s 180 of the U. P. Tenancy Act, 1939. However, in the proviso to Section 27 (3) no distinction is made between the sub-tenant of a reinstated tenant or that of a re-instated trespasser (who had been earlier ejected u/s 180) or that of a re-instated tenant (who had been earlier ejected u/s 165 or Section 171) ; he remains liable to pay rent to the re-instated person, irrespective of whether the latter is a tenant or a trespasser and is liable to be ejected after a period of three years from the date of declaration.

This clearly shows that the sub-tenants were not concerned with the question whether the re-instated persons belonged to the category of tenants or of trespassers. In the facts of the instant case, acquisition of tenancy rights as hereditary tenants is claimed on the ground of possession for more than two years from, the date of trespass upto the date of ejectment but it is just an accident that more than two years from the date of trespass (of course, such date is computed from July 1, next following the trespass) had expired when the opposite parties Nos. 4 to 9 were actually ejected by the landlords. Even if they had been ejected after only one year and they might not have been in a position to claim the acquisition of hereditary rights and subsequently Sirdari rights on the date of vesting, still, in my opinion, the maintainability of their suits u/s 202 against the petitioners could not be questioned on the ground that they had not acquired Sirdari rights when they filed the said suits. In short, the status of the opposite parties Nos. 4 to 9 as land-holders u/s 202 was not dependent on their being either Bhumidhars or Sirdars of the plots in question.

17. There has been case law which has held that the tenant-in-chief is the landholder in relation to his sub-tenant. See *Raghubir v. Hardowari* ((1934) 18 RD 262) (BR).

18. In view of what I have stated above, I have felt that it should not be necessary to decide whether the opposite parties Nos. 4 to 9 had acquired hereditary rights on the date of vesting, I find that the pleadings of the parties in the suits in question are not before us. It is not clear whether in their pleadings, the opposite parties Nos. 4 to 9 claimed the acquisition of hereditary rights before the date of vesting and, if they did at all claim, whether the claim to Sirdari rights was u/s 16 or u/s 19 of the U. P. Act I of 1951. It seems from the judgment of the trial court that the plaintiffs in all probability claimed to be the Sirdars of the land in question. Issue No. 1 in the suit was like this 5

"Whether the plaintiffs are Sirdars and landholders of the plots in suit ?"

19. However, on what basis the Sirdari rights were claimed is not clear even from the judgment of the trial court. It is a fact that in the judgment of the Board of Revenue in the second appeal the opposite parties Nos. 4 to 9 have been held to have become Sirdars u/s 19 of the U. P. Act I of 1951 but as against this, before the learned Single Judge, the late Mr. Justice Dwivedi, a plea was advanced on their behalf that they were the Adhivasis under Clause (b) of Section 20 and

subsequently became Sirdars in October, 1954 by virtue of Section 240-A of the U. P. Act 1 of 1951. It is, therefore, clear that while the Board of Revenue held them to have become Sirdars u/s 19, in this court before the learned Single Judge. Sirdari rights were claimed to have been acquired on the basis of Section 20, Clause (b) read with Section 240-A of the U. P. Act 1 of 1951".

20. In a situation like this, I feel that we should not go into the said controversy. In the absence of the pleadings of the parties, in the absence of anything to show from the record whether Sirdari rights were being claimed U/s. 16 or Section 19 or u/s 20 read with Section 240-A of the U. P. Act 1 of 1951, and indeed when from the record it is clear that such rights were being claimed from time to time on different grounds, and when the question whether the opposite parties Nos. 4 to 9 were Sirdars or not is wholly irrelevant to the maintainability of a suit u/s 202, I fail to see the justification or desirability of deciding the said question,

21. However, subject to the aforesaid observations of mine, I shall advert to the controversy which has been raised before the Full Bench as to whether the opposite parties Nos. 4 to 9 can be held to have become hereditary tenants on the ground that on the date of their actual ejection, they had remained in occupation for a period of more than two years. It is contended that the said result follows from the provisions of the U.P. Act 10 of 1947. Treating the matter as *res integra*, it seems to me that there is considerable difficulty in accepting the said contention. It will be recalled that under Sub-section (2) of Section 180 of the U. P. Tenancy Act, 1939. it was laid down as follows :--

"If no suit is brought under this Section, or if a decree obtained under this section is not executed, the person in possession shall become a hereditary tenant of such plot, or if such person is a co-sharer, he shall become a Khudkasht holder, on the expiry of the period of limitation prescribed for such suit or for the execution of such decree, as the case may be

Provided that where the person in possession cannot be admitted to such plot except as sub-tenant by the person entitled to admit, the provisions of this sub-section shall not apply until the interest of the person so entitled to admit is extinguished in such plot under S. 45 (f)."

22. This sub-section remained materially unaffected so far as its bearing on the present controversy is concerned by the amendments effected by the U. P. Amending Act 10 of 1947. In the instant case, it is not disputed that the suit in question was filed within two years from the date when the limitation started for the filing of the suits u/s 180. In this connection, a reference may be made to the chronological sequence of events as narrated above. The actual trespass by opposite parties Nos. 4 to 9 took place on 12th December, 1939. The starting point of limitation for a suit u/s 180 was July 1, 1940 and the suit was filed on 7th February, 1942, Thus the suit was filed within two years from the date of the start of limitation. However, the actual ejection which took place on 21st May,

1943 was beyond the period of two years (computing the starting point from 1st July, 1940) but within a period of three years. At the time when the said suit u/s 180 was instituted the period of limitation for a suit u/s 180 was three years. Two provisions contained in the U. P. Act 10 of 1947 are invoked to support the contention that the opposite parties Nos. 4 to 9 became hereditary tenants. The said provisions are Section 27 (5) and Section 32 of the said Act. We shall examine these provisions. Section 27 (5) laid down as follows :--

"On reinstatement, the right and liabilities of the applicant existing on the date of his ejectment or dispossession in respect of the holding or any part thereof from which he was ejected or dispossessed, shall revive subject to the proviso to Sub-section (3)."

23. Section 32 laid down as follows 3 "In Group B of Schedule IV to the said Act, against serial No. 18, in respect of (2) (b) in column 3, for the words "three years" in column 4. the words "two years" shall be substituted."

24. I do not think there is anything else in the amending Act of 1947 which has any bearing on the controversy at hand. It cannot be doubted that if Section 32 had not reduced the period of limitation for a suit u/s 180 from a period of three years to two years, then Sub-section (5) of Section 27 by itself would not have brought about any change in the rights and liabilities of the parties concerned. In the facts of the instant case, if Section 32 were not there, then on the basis of Section 27 (5) alone on reinstatement, the rights and liabilities of the opposite parties Nos. 4 to 9 would have been such as they existed on the date of ejectment subject to the proviso to Sub-section (3). It is not necessary to advert to the proviso to Sub-section (3) in this controversy. The date of ejectment in the instant case was 21-5-1943,

On the said date, it cannot be denied that the opposite parties Nos. 4 to 9 were not entitled to claim any benefit u/s 180 (2) because the suit had been filed within the period of limitation and the execution of the decree had not become barred. Indeed, execution had been carried out. Therefore, I again emphasise, the enactment of Sub-section (5) of Section 27 in itself did not cause any change in the rights of the said opposite parties in the plots in dispute. This sub-section, by itself, it is not disputed, could not enable the said opposite parties Nos. 4 to 9 to claim hereditary rights on reinstatement because such rights could only be claimed with the aid of Section 180 (2) and the said sub-section could not help the said opposite parties because they had been sued by the landlords for ejectment u/s 180 within the period of limitation. I think there should be no difficulty in accepting this aspect of the matter.

25. However, it is said that in view of the amendment effected by Section 32 of the amending Act reducing the period of limitation for a suit u/s 180 from three years to two years, the position of the judgment debtors in decrees passed earlier in suits u/s 180 underwent a change. Now, it cannot be disputed that ordinarily when the period of limitation for the filing of the suits is amended by

the statute, then such amendment does not affect the suits which were earlier filed and decided or suits which have been filed earlier and are pending on the date of the amendment. The amended period of limitation is meant for the new suits to be filed after amendment. However,, Section 31 of the U. P. Act 10 of 1947 was an exception and it affected even pending suits. The Full Bench in Raghuraj Singh Vs. Sobhaman, laid down that the reduced period of limitation was applicable to the suits u/s 180 which were pending in second appeals on the date when the amending Act came into force, that is, on 14-6-1947.

It is not disputed that in the instant case. Section 31 is not relevant because the suit u/s 180 and the execution proceedings in respect of the decree passed therein, stood already concluded before the enactment of the U. P. Act 10 of 1947. I fail to see how the amendment effected by Section 32 in Schedule IV Group B, against serial No. 18 in the U. P. Tenancy Act, 1939 reducing the period of limitation for the filing of a suit u/s 180 from three years to two years in itself disregarding for the time being Section 27 (5), could affect the rights of the parties in a suit u/s 380 which had been decided much earlier and the execution of! the decree whereof had also gone through and stood completed. It cannot be disputed that if Section 32 were to stand all alone and Section 27 (5) were not there, then the opposite parties Nos, 4 to 9 could not have claimed any hereditary rights on the basis of Section 180 (2) on the ground that in 1947, by Section 32, the period of limitation stood reduced from the period of three years to the period of two years. The rights of the parties in decided cases do not stand affected merely because after the decision in the case, the legislature effects change in the period of limitation,

26. However, it was argued that on a combined reading of the two provisions viz. Section 27 (5) and Section 32. the result followed that those trespassers against whom suits were filed within two years of the start of limitation but who were ejected after a period of two years became hereditary tenants. I am unable to accept this contention. I have shown above that by itself neither of the said two provisions was capable of bringing about the said result and I do not think that the combined effect of the two provisions is any different. It was contended that Section 32 which reduced the period of limitation for suing u/s 180 from 3 years to 2 years should be deemed to be retrospective. For the purpose of argument, the maximum retrospectivity may be given to Section 32 so that it may be supposed that the said provision should be deemed to have been in existence and operation when, in the instant case, a suit was filed on 7-2-1942 u/s 180. The effect of giving such retrospectivity will be that on 7-2-1942 when the suit u/s 180, was filed, it will be deemed that the period of limitation was two years from the date when limitation started i. e. in the instant case, from July 1, 1940. The suit was filed on 7-2-1942 -- well within two years of July 1, 1940.

Thus the suit was filed within the period of limitation even on the basis of the reduced period of limitation brought into existence by Section 32 of the U. P. Act 10 of 1947. Now let us advert to Section 180 (2) to see whether the opposite

parties Nos. 4 to 9 could claim to have acquired hereditary rights on the ground that the reduced period of limitation should be deemed to have been in operation on 7-2-1942 when the suit u/s 130 was instituted. They could not claim the benefit of Section 180 (2) because the suit was instituted within limitation even on the basis of the reduced period of two years of limitation, Thus on the basis of a retrospective operation of Section 32, the said opposite parties could not claim to have acquired hereditary rights for the suits were filed within two years, that is. within the reduced period of limitation and the benefit of Section 180 (2) could not be availed of by the said opposite parties. So far as Section 27 (5) was concerned, it was a declaratory provision which declared that the rights of the parties would be as on the date of ejectment. These rights will have to be determined on the basis of other provisions contained in the U. P. Tenancy Act or in the 1947 amending Act,

It will not be a correct interpretation of Section 27 (5) to think that it enabled the trespassers to avail the benefit of their possession during the period of the suit u/s 180 and subsequently during the period of execution proceedings up to the date of ejectment because such an interpretation will be in conflict with the substantive provision contained in Section 180 (2) which, as I have stated above, did not undergo any material amendment by the U. P. Act 10 of 1947. If the legislative aim was to confer hereditary rights on the trespassers against whom the suits were filed within two years of the start of limitation but who were ejected after the period of two years in the execution of the decrees passed in suits u/s 180, then it was incumbent for the legislature to have effected suitable changes in Section 180 (2). Or. in the alternative, in Section 27(5) it should have been provided that the rights of the parties would be as on the date of ejectment and for determining such rights it would be deemed as if no suit had been filed u/s 180. No such provision was made in Section 27 (5) for disregarding the effect of the institution of a smf u/s 180 and it. is not permissible to disregard the effect of the institution of such a suit when Section 180 (2) made the date of the institution of the suit the decisive criterion for determining whether the trespasser acquired tenancy rights or not.

In the absence of any such amendment of Section 180 (2) or in the absence of any provision in Section 27 (5) rendering the institution of the earlier suit u/s 180 ineffective, it is not possible to contend with the aid of Section 27 (5) read with Section 32 of the U. P. Act 10 of 1947 that those trespassers against whom the suits were filed within a period of two years but who were ejected after the said period became hereditary tenants. Such an interpretation, as I stated above, would be in conflict with Section 180 (2) which prescribed only two ways in which the trespassers could become hereditary tenants -- one where the suit was not brought within the period of limitation and secondly where the decree obtained u/s 180 was not executed within the period of limitation. There is no third category consisting of the trespassers against whom suits might have been filed within a period of two years but whose ejectment took place after the said period of two years. The justification for the said category is said to be provided by a combined

reading of Section 27 (5) read with Section 32 of the U. P. Act 10 of 1947. When Section 180 (2) in so far as this aspect of the matter is concerned was left un-amended by the U. P. Act 10 of 1947, in my opinion, it is not possible to justify the said interpretation.

21. It is a fundamental proposition that once a suit is filed, the period of limitation ceases to run. A trespasser is not entitled to seek benefit of his occupation during the period of the pendency of the suit or during the execution proceedings. He is entitled to the benefit of his occupation during the period prior to and till the institution of the suit. See AIR 1945 5 (Privy Council) where it was laid down as under;--

""Sir Thomas Strangman contended strongly that since the title of the contending parties was involved in the suit it would be quite futile to institute a suit for possession. Their Lordship's are unable to appreciate this point for the institution of a suit can never be said to be futile, if it would thereby prevent the running of limitation,"

28. The head-note in (1942) 46 Cal WN 551 Maharam Ali v. Mobarak Ali lays down as follows :--

""Section 28 of the Limitation Act does not extinguish the title of a person who being dispossessed brings a suit within twelve years of the dispossession, though he may get a decree and possession beyond such period."

29. Section 28 of the old Limitation Act was in material respects analogous to Section 180 (2) of the U. P. Tenancy Act, 1939. In my opinion, there was nothing in the provision of U. P. Act 10 of 1947 which might be said to have affected the said fundamental position in law.

30. Something has been said about the purpose behind the enactment of the U. P. Act 10 of 1947. The statement of objects and reasons which led to the passing of the said Act was as follows :

"The interpretation of certain provisions of the United Provinces Tenancy Act by the courts made it possible for the landlords to secure the ejectment of a very large number of cultivators in contravention of the underlying intention of the Act. which was to confer security of tenure upon tenants. On resumption of office the Ministry immediately appointed a Committee to examine the working of certain sections of the Act and to make suggestions to remedy the defects and to consider and report whether land from which tenants had been ejected could be restored to them. The Committee was also required to consider whether the provisions of the various Acts passed during the Section 93 regime to amend the United Provinces Tenancy Act should be re-pealed or permanently incorporated in the Act after re-enactment in their present or amended form. The Committee gave its serious thought to the matters referred to it and its recommendations are contained in the report placed on the table Government after a careful consideration of those recommendations took decisions, which have been

embodied in the present Bill."

31. In the Report of the United Provinces Zamindari Abolition Committee, Volume 1. at pages 850. 351 and 352, it has been stated as under :--

"Finally the United Provinces Tenancy Act. 1939, conferred hereditary rights on all tenants and. thereby, arbitrary ejectment came to an end. But the landlord's rapacity continued to be acute as ever. He did not fail to take the fullest advantage of some loopholes left in the 1939 law. Section 171 of the United Provinces Tenancy Act, 1939, provides, among other things, for the ejectment of a tenant who sublets his holding contrary to the provisions of law, that is. for a period of more than 5 years, or before the expiry of three years after the last sub-letting. This provision was intended to apply only to sub-leases made after the commencement of the new law. The Board of Revenue, however, held that the law applied retrospectively and any sub-letting made contrary to law, whether before or after the commencement of the new Act. came within the mischief of that section. Some other rulings laid down that all lands held by subtenants for more than one year without a registered sub-lease were held unlawfully. Tempted by the prevailing high prices of agricultural produce during the second World War the landlord took the fullest advantage of these interpretations and filed a huge number of suits for the ejectment of tenants and subtenants u/s 171, with a view to increase rents and realise nazrana from new tenants. No warning could prove of any avail. The following table gives the number of suits filed and the area from which the tenants were ejected u/s 171 :

Year

Total no. of cases disposed of.

Number in which ejectment actually ordered.

Area in acres from which ejectment actually took place.

1939-40

2,172

664

709. 3

1910-41

16, 083

7,538

6,306.77

1941-42

42,061

21.142  
31,458.43  
1942-43  
50,257  
24,858  
38,148.48  
46,610  
24,174  
34,200.46  
Total ?  
157,173  
78,368  
1,10,823.89

After the restoration of the Congress Ministry in 1946, the mischief was undone and lands were restored by an amending Act to the tenants who had been ejected u/s 171, contrary to the intentions of the framers of the United Provinces Act, 1939. All the same the landlords could not be made to disgorge the huge sum they had received as nazrana in these transactions. The following tables give figures for ejectment under Sections 163 to 165, 175 to 179 and 180 of the United Provinces Tenancy Act, 1939, up to the end of 1944.

#### Sections 163-165

Year

Total no. of cases disposed of.

Number in which ejectment actually ordered.

Area in acres from which ejectment actually took place.

1939-40  
10,751  
2,112  
995.89  
1940-41  
43,928  
13,401

29585.92

1941-42

63,360

23,141

53485.53

1942-43

52,789

19,540

87,41214

1943-44

30,229

10,065

45,017.93

Total

1,98,057

68,259

1,46,497.41

Sections 175-179

Year

Total no. of cases disposed of.

Number in which ejectment actually ordered.

Area in acres from which ejectment actually took place.

1939-40

14,606

6.179

4,819,98

1940-41

43,752

34 671

55,254.61

1941-42  
17,075  
14,886  
24,052.68  
1942-43  
12,907  
10,833  
18,240.09  
1943-44  
45,451  
31,062  
25,793.19  
Total ?  
1,33,091  
97,631  
12 81.60.55  
3,11,584  
3,26,991.48

N.B.-

These figures were furnished by the Board's office for the period from January 1, 1940 to December 31, 1945.

Section 180

1939-40  
31,369  
19,068  
28,676.88  
1940-41  
50,036  
28,746  
34,32069

1941-12

43,244

25,017

32,46129

1942-43

1,02136

58.851

42,652.61

1943-44

82,029

46,694

46,34729

Total ?

3,08,874

1,77,375

1,84,358.71

2,06, 958

2,19,166.99

N.B.-

These figures were furnished by the Board's office for the period from January 1, 1940 to December 31, 1945.

32. The aforesaid facts, however, in no way, will justify the interpretation which is sought to be placed on Section 27 (5) read with Section 32 of the U. P. Act 10 of 1947. I again repeat that in the absence of necessary amendment in Section 180 (2) of the U. P. Tenancy Act or in the absence of a provision in Section 27 (5) of the amending Act 10 of 1947 providing that the earlier institution of suits u/s 180 was to be disregarded for the purpose of determining the rights of the parties on the date of ejectment, it was not possible to confer hereditary rights on such trespasser against whom suits u/s 180 had been filed within a period of two years but who were ejected in the execution of the decrees passed in the said suit after a period of two years. In my opinion, our brother Gopi Nath, J. who referred this case to the larger Bench, in his referring order correctly doubted the contention that such trespassers (against whom suits were filed within a period of two years but who were ejected in the execution of the decrees

after the said period) became hereditary tenants in view of the provisions of the U. P. Act 10 of 1947. He observed .

"Hereditary rights u/s 180 are matured by the application of Sub-section (2) thereof. Sub-section (2) of Section 180 of the U. P. Tenancy Act. so far as material. provides :--

A trespasser can become a hereditary tenant only if no suit against him is filed within the prescribed period or a decree obtained is not executed within time, what is therefore to be seen in the instant case is whether a suit was filed within two years and a decree executed within time. As seen above, the suit was filed within two years and the decree executed and possession obtained within one year of the decree, Respondents Nos. 4 to 9 consequently did not mature hereditary rights."

33. At another place, referring to the Full Bench decision reported in Kedar Nath Vs. Jamuna and Another, holding that the earlier decrees obtained u/s 180 did not become ineffective after the reinstatement u/s 27 (3) of the U. P. Act 10 of 1947. Gopi Nath. J. observed :

"Once it is held that the earlier decree was valid and what was affected by Sub-section (5) of Section 27 was the execution thereof, the status of a trespasser would not be converted into that of a hereditary tenant on the ground that the actual ejectment took place after two years from the date of trespass. Sub-section (2) of Section 180 of the U. P. Tenancy Act provides that hereditary rights accrue only if a suit is not filed within time or a decree obtained not executed within limitation. If a suit is filed within limitation and the decree also executed within the time prescribed therefor, Sub-section (2) of Section 180 of the U. P. Tenancy Act would not protect a trespasser. According to the decision in Kedar Nath v. Jamuna (supra) the decree remained intact. Only a fresh execution was required for the ejectment of the judgment-debtor after his reinstatement under Sub-section (5) of Section 27, In this case execution was also taken out within time."

34. I shall now advert to the case law on the subject. The relevant cases are these :

1. Raghuraj Singh Vs. Sobhaman,
2. Sri Ram Pathak v. Board of Revenue. 1956 All LJ 343.
3. Kedar Nath Vs. Jamuna and Another, .
4. Gopal Narain and Another Vs. Kanchanlal and Others, .
5. Ramesh Chand and Others Vs. Board of Revenue and Others, .
6. Prem Singh and Others Vs. Hukam Singh and Others, .

35. In Raghuraj Singh Vs. Sobhaman, , the following two questions were referred to the Full Bench :--

"(1) Does the alteration made by Section 32, U. P. Tenancy (Amendment) Act 10 of 1947 in the period of limitation for a suit u/s 180. U. P. Tenancy Act, govern suits instituted before the enactment came into force?

(2) Can the new rule of limitation be applied for deciding cases which have reached the stage of appeal?"

36. Agarwala, J., with whom the other two members of the Bench agreed, answered the said questions as follows :--

"My answer to the first question referred to us is "yes" if the suit is pending on the date when the Amending Act 1947 came into force and my answer to the second question is "yes"."

37. The Full Bench returned the said answers on the basis of its interpretation of Section 32 read with Section 31. Five kinds of actions were visualised--the fifth was said to be of action "which has been already decided and execution has also been carried out in full." Then it was observed :--

"It is only the fifth category of cases which are not affected by Section 31."

38. It is, therefore, clear that the retrospectivity which was given to Section 32 was confined only to pending actions and not to those cases which stood already decided and in which even execution had been carried out in full. It was emphasised that :

"Even if an enactment is retrospective in operation, it should not be given a larger retrospective effect than is absolutely necessary."

39. In 1956 All LJ 343 supra), the Division Bench consisted of Agarwala, and M. L. Chaturvedi, JJ. I have already stated that Agarwala, J. was in the earlier Full Bench and he wrote out the main opinion with which the other two learned Judges of the Full Bench agreed. It will be reasonable, therefore, to think that Agarwala, J., in the Division Bench, did not intend to contradict himself with his stand in the earlier Full Bench. In the facts of the said case, proceedings for reinstatement had taken place under the U. P. Act No. 10 of 1947. Thus, the trespasser who had been ejected in the execution of a decree in a suit u/s 180 was able to get reinstatement. A week after such reinstatement, the landlords filed a second suit u/s 180 of the U. P. Tenancy Act for ejecting the reinstated trespasser. The question was whether the second suit u/s 180 was maintainable or not looking to the provisions of Section 27 (3) and Sub-section (5) of the U. P. Act 10 of 1947. Two rival contentions which were raised were these. On behalf of the landlord it was contended that even after reinstatement, in view of Section 27 (5), the reinstated person remained a trespasser and he was liable to be ejected in a fresh suit u/s 180. On the other hand, the reinstated person claimed that if the said contention of the landlords were to be accepted, the provisions of Section 27 by which he was restored possession would be nullified. The Division Bench observed :--

"At first sight there appears to be an anomaly in the provisions of Section 27 of Act X of 1947. If the trespasser was to be reinstated to the land, what was the use of reinstating him if he was again to be ejected immediately after the order of reinstatement was passed. It may be noted, however, that by Section 32 of Act No X of 1947 the period of limitation for the ejectment of a trespasser was reduced from three to two years and this may provide the key for understanding the anomaly created by Section 27. It appears to us that the effect of Sub-section (5) of Section 27 is that if a suit for the ejectment of the trespasser, who has been reinstated to his land under" Section 27, if filed, the period of limitation, that will now be calculated, is not three years, as it was when the earlier suit for ejectment was filed, but two years as it has been laid down in Act No. X of 1947. Therefore those trespassers, who had completed two years of possession before they were ejected under the law as it prevailed before the commencement of Act No. X of 1947, would be entitled to retain possession after their reinstatement; but those trespassers, who had not completed even two years at the time when they were previously ejected, would be liable to be ejected upon a suit being filed within two years of their reinstatement."

40. It is obvious that the aforesaid observations were made to meet the argument which was raised on behalf of the reinstated persons that a second suit u/s 180 should be held to be not maintainable for else there was no point in the legislature granting reinstatement to the ejected persons. The Division Bench rejected the said contention by pointing out that in view of the change in the period of limitation brought about by Section 32, a good defence will be available to certain categories of trespassers in the second suit which might be filed against them by the landlord u/s 180. Such category will consist of those trespassers against whom the earlier suit u/s 180 had been filed after the expiry of a period of two years from the date of the start of limitation, in the fresh suit, such trespassers as defendants will be enabled to contend that the suit against them would be barred in view of the reduced period of limitation. Thus, in the case of this category of trespassers, it cannot be suggested that their reinstatement u/s 27 (3) was a mere transient interlude to be followed by another ejectment in the fresh suit u/s 180.

In a fresh suit, the trespassers belonging to the said category will have a good defence to escape ejectment. The latter part of the observations of the Division Bench has to be interpreted in conjunction with the former portion of the observations. Hence, when the Bench observed that "those trespassers, who had completed two years of possession before they were ejected under the law as it prevailed before the commencement of Act No. X of 1947. would be entitled to retain possession after their reinstatement; but those trespassers, who had not completed even two years at the time when they were previously ejected, would be liable to be ejected upon a suit being filed within two years of their reinstatement," it was really having in mind that category of trespassers against whom earlier suits u/s 180 had been filed after the expiry of a period of two years from the date of the start of limitation.

It was really not intended to lay down that in a fresh suit to be filed by the landlord against the trespassers u/s 180, the trespassers would be entitled to contend that the two years" period of limitation should include not only the period from the date of the start of limitation up to the date of the limitation of the first suit but also the period of the pending of the suit and the period taken in the execution of the decree up to the date of ejectment. Such an interpretation will be against the law which was laid down by Agar-wala, J. himself in the earlier Full Bench. I agree with my brother Gopi Nath, J. in the following observations made by him in the referring order relating to the aforesaid observations of the Division Bench :--

"In my opinion what the observation really means is, not the actual ejectment but a proceeding relating to ejectment, i. e. a suit for ejectment filed within two years of the date of trespass."

41. According to my understanding, the Division Bench is an authority only for the proposition that in case fresh suits were filed after reinstatement, then a good defence would be open to such trespassers against whom the earlier suits u/s 180 were filed after the expiry of a period of two years from the date of the commencement of limitation.

42. In Kedar Nath Vs. Jamuna and Another, , on an interpretation of Section 27 (5) of the 1947 Act, it was laid down that trespassers, even after their reinstatement u/s 27 (3), remained liable to be evicted in the execution of the decree passed in the earlier suit u/s 180 and a second suit u/s 180 after the reinstatement was not maintainable. It is obvious that this Full Bench overruled the earlier Division Bench decision reported in 1956 All LJ 343 sup to a limited extent at least in so far as in the latter case it had been laid down that a second suit u/s 180 was not maintainable against trespassers. The Full Bench granted a limited approval to the said Division Bench authority in so far as the latter laid down that the trespassers were liable to be again evicted despite their earlier reinstatement. It will be recalled that before the Division Bench it had been argued that reinstated trespassers were not liable to be evicted after their reinstatement because that would have nullified the purpose of reinstatement. This argument was repelled by the Division Bench and it was held that trespassers remained liable to be again evicted after their reinstatement.

To this extent the Division Bench is said to have laid down the correct law. But while the Division Bench held that the reinstated trespassers were liable to be evicted in a fresh suit u/s 180. the Full Bench, on the contrary laid down that they were liable to be evicted in the execution of the earlier decree passed u/s 180 which continued to remain intact despite the enactment of the U. P. Act 10 of 1947 and in view of the existence of the said decree, a second suit u/s 180 after the reinstatement of the trespassers would not be maintainable due to the bar contained in Section 47 C. P. C.

I cannot see how this Full Bench can be said to have wholeheartedly approved

the earlier Division Bench case when the Full Bench has clearly held that a second suit u/s 180 was not maintainable unlike the pronouncement of the Division Bench upholding the maintainability of the fresh suit. This Full Bench is even remotely not an authority for the proposition that those trespassers, against whom suits were filed within two years of the start of limitation but who were ejected after the expiry of two years, became hereditary tenants by virtue of the provisions contained in Section 27 and Section 32 of the U. P. Act 10 of 1947,

43. In *Gopal Narain and Another Vs. Kanchanlal and Others*, the Division Bench was not concerned with trespassers at all. The persons seeking reinstatement were the tenants and they were alleged to have surrendered their plots in favour of the landlords. They were seeking relief u/s 27 (2) of the U. P. Act 10 of 1947. This case is, therefore, not of much help in determining the controversy in the instant writ petitions.

44. In the Full Bench decision reported in *Ramesh Chand and Others Vs. Board of Revenue and Others*, it was again a case where the reinstated person was the original hereditary tenant of the holding in suit. He filed a suit u/s 202 of U. P. Act 1 of 1951 against his sub-tenants (who had been declared as such under the proviso to Section 27 (3) of the U. P. Act 10 of 1947) after the expiry of three years from the date of the declaration. The suit had been decreed by the courts below and a writ petition was filed challenging the verdict of the said courts. The said petition was dismissed and thereafter a special appeal was filed which came up before the Full Bench for hearing. The special appeal was dismissed and it was held (at p. 933) :

"In our opinion, Bhagmal became a Sirdar. The appellants acquired the status of sub-tenants. They were liable to ejectment on the expiry of three years from the date of the order of reinstatement. The application for reinstatement was rightly allowed. The suit for ejectment u/s 202. Zamindari Abolition Act, was validly decreed."

45. The Full Bench held that by virtue of Section 27 (5), the original hereditary tenant {who had been ejected in a decree u/s 180} should, on reinstatement be deemed to have remained a hereditary tenant during the period between his ejectment and reinstatement. It referred to 1956 All LJ 343 (supra) in support of the view that "on reinstatement pre-existing right revived retrospectively." It was further observed "The decision in *Sri Ram Pathak*'s case was upheld by the Full Bench in *Kedar Nath v. Jamuna* (1964 All LJ 442 )"". With respect, it will not be quite correct to say that the aforesaid Full Bench in *Kedar Nath Vs. Jamuna and Another*, had really upheld the decision in *Sri Ram Pathak*'s case in its entirety. In my view the said Division Bench case got only a qualified approval and in a very material respect it stood overruled by the decision in the said Full Bench case. However, I recognise that it is not for this Full Bench consisting of three judges to decide whether the observations of the Full Bench reported in *Ramesh Chand and Others Vs. Board of Revenue and Others*, were apposite or not.

However, one thing seems to me clear. The Full Bench in *Ramesh Chand and Others Vs. Board of Revenue and Others*, was concerned with the case of a reinstated hereditary tenant and his right to eject his sub-tenants u/s 202. It was not concerned with the rights of the reinstated trespassers and, therefore, it is not an authority for the proposition that the reinstated trespassers against whom suits were filed within a period of two years of the start of limitation but who were evicted after the period of two years in the execution of the decree, acquired hereditary rights on account of the fact that even though on the date of the suit, the period of two years had not expired, but as on the date of ejectment, the period of two years stood expired, therefore, such trespassers acquired hereditary rights.

46. In *Prem Singh and Others Vs. Hukam Singh and Others*, , again, there was no such controversy as is being dealt with by this Full Bench. The reinstated person was an occupancy tenant and he had been ejected in the execution of the decree passed in a suit u/s 171 of the U. P. Tenancy Act, 1939. The Full Bench in the said case was not concerned with the case of trespassers ejected u/s 180 of the said Act. There is nothing in this Full Bench which may throw any light on the controversy at hand.

47. It, therefore, seems to me that there is no case where till so far it might have been laid down that those trespassers against whom suits u/s 180 were filed within two years of the start of limitation, but who were evicted in the execution of the decrees after the said period of two years, should be deemed to have become sirdars on the ground that on the date of actual ejectment, the period of two years stood expired even though suits had been filed -against such trespassers well within the period of two years. In my view, support for such a proposition which is sought to be obtained from the Division Bench case reported in 1956 All LJ 343 sup) is not warranted as on the true import of the observations of the said Division Bench no such law was intended to be laid down and, indeed, it is not clear that the Division Bench in the said case was really called upon to decide a specific case of a trespasser against whom the suit u/s 180 might have been filed within the period of two years but who had been ejected after the expiry of the period of two years. However, I am clear in my mind that in case it be held that the Division Bench intended to lay down the said proposition, then, in my view, it was not the correct interpretation of law.

48. It is said that on the principle of stare decisis, we should uphold the aforesaid proposition. I am not impressed with this argument. For one thing not one single case has been brought to our notice where it might have been held that trespassers against whom suits were filed within a period of two years but who were evicted after the said period of two years acquired hereditary rights by virtue of the provisions contained in Section 27 and Section 32 of the U. P. Act 10 of 1947. When no specific case decided to the said effect has been cited before us, it is not possible to import the doctrine of stare decisis. The fact that in the cases decided after 1956. the Division Bench case reported in 1956 - All LJ

343 sup was getting a qualified approval should not lead us to the conclusion that it was being laid down that trespassers against whom suits were filed within the period of two years but who were evicted after the period of two years acquired hereditary rights.

That controversy was never before the courts in the said cases. It is also not correct to say that the said Division Bench case was being upheld in its entirety. I have already indicated above that the Full Bench decision reported in Kedar Nath Vs. Jamuna and Another, in a very material respect overruled the said decision of the Division Bench. It is interesting to see that sometimes while placing reliance on the aforesaid Division Bench case the Board of Revenue laid down a proposition which is contrary to the one which is now sought to be propounded before us on the basis of the aforesaid Division Bench case. For example, in Ram Naresh v. Ram Autar (1959 R. D. 301), a reference was made to Sri Ram Pathak's case. However, relying on the Board's decision reported in 1951 R. D. 106. it was held that "a person, who was ejected as a trespasser, after reinstatement u/s 27. cannot acquire higher rights than that of a trespasser, i. e., he is entitled to revival of the same rights and title which he had possessed when he was ejected in the suit u/s 180, U. P. Tenancy Act. Thus the plaintiff Ram Autar does not acquire hereditary right on the date immediately preceding the date of vesting and as such he does not acquire the rights of Sirdar u/s 19 of the U.P. Z. A. & L. R. Act." This conclusion is undoubtedly against the proposition which is now sought to be canvassed before us, namely, that the reinstated trespassers acquired hereditary rights and u/s 19 of the U. P. Act 1 of 1951 became the Sirdars. Of course, I am not in agreement with the other point which has been laid down in the said case decided by the Board of Revenue. It was observed in the said case :

"Now the question is whether Ram Autar, the present plaintiff has acquired the rights of "landholder" under any provisions of the U. P. Zamindari Abolition and Land Reforms Act. Unless Ram Autar acquired the rights of bhumidhar. sirdar or adhivasi. he cannot maintain any suit u/s 202 U. P. Zamindari Abolition and Land Reforms Act."

49. In the earlier discussion. I have repelled the said view. My limited purpose in making a reference to the said decision of the Board of Revenue is to show that the Division Bench judgment reported in 1956 All LJ 343 sup ra) was being interpreted in different manners and the Board in the said case interpreted the Division Bench in a manner contrary to the proposition which is now sought to be supported on the basis of the said Division Bench. In such a situation, the invocation of the principle of stare decisis is not justified because it cannot be said that there was one consistent line of interpretation in the cases which were decided after the pronouncement of the Division Bench in 1956. It will be seen that in Sonawati and Others Vs. Sri Ram and Another, , the Supreme Court upset the Full Bench decision of this court in regard to the interpretation of Section 20 (b) (i) of U. P. Act 1 of 1951. Many cases had been decided on the basis of the

Full Bench decision of this Court and yet the Supreme Court upset the decision of the Full Bench. No principle of stare decisis was allowed to come in the way.

In my opinion, there is no justification for invoking the principle of stare decisis on the facts of the instant case. More so when as I already pointed out, it is really not necessary to decide whether the opposite parties Nos. 4 to 9 had acquired sirdari rights on the ground that they had remained in possession for more than two years on the date of their ejection on 21-5-1943 even though a suit against them was filed well within the period of two years of the start of limitation,

50. I now go on to consider the second contention raised by Sri Sripat Narain Singh to attack the judgments of the courts below decreeing the suits u/s 202. He contended that the suits in question were barred by Section 11 C. P. C. The said contention is raised on the basis that in 1954, the opposite parties Nos. 4 to 9 had filed seven suits u/s 202 against seven sets of defendants and two of these suits related to the respective petitioners in the instant two writ petitions. The said suits were dismissed and the review petitions were also dismissed." The matter became final thereafter. Counsel's contention is that in view of the judgments in the said suits, the subsequent suits u/s 202 were not maintainable.

The earlier suits were dismissed on the short ground that the claim of the opposite parties Nos. 4 to 9 for reinstatement u/s 27 of the U. P. Act 10 of 1947 stood rejected by the order dated 31-1-1955 passed by the Board of Revenue allowing the revision against the order of the Collector granting reinstatement. The suits u/s 202 were dismissed on 3-5-1955 and on the said date it was the Board's order dated 31-1-1955 which held the field. It is obvious that the suits were bound to be dismissed on the preliminary ground that the plaintiffs were not the reinstated persons and the defendants were not the sub-tenants in terms of the proviso to Section 27 (3). The very basis of the suit was, therefore, lacking. In reality, the dismissal should be deemed to be on the ground that the suit was premature inasmuch as the status of the plaintiffs and the defendants had not been finally decided and was the subject-matter of a writ petition which had been filed against the said order of the Board of Revenue dated 31-1-1955.

The said writ petition was allowed on 28-9-1955, and the case was remanded to the Board of Revenue. The Board ultimately, on remand, dismissed the said revision on 25-5-1961 and upheld the Collector's order dated 28-3-1951 granting reinstatement. It will thus be seen that the status of the parties stood finally determined only on 25-5-1961 when the Board dismissed the revision and upheld the Collector's order of reinstatement. Thereafter, the instant suits were filed on 9-8-1961 (I am disregarding the writ petition against the Board's aforesaid order dated 25-5-1961 which was dismissed by this court on 17-5-1965. Nothing turns on the result of the said writ petition).

Therefore, it will be seen that the dismissal of the earlier suit filed u/s 202 was substantially on the preliminary basis that the parties were not shown to be

covered by the provisions of Section 27. The said finding at the said stage was justified in view of the Board's order dated 31-1-1955. However, as the controversy had not become final in view of the pendency of the writ petition against the said order of the Board and ultimately the Board's order was set aside, therefore, it has to be held that the opposite parties Nos. 4 to 9 acquired the said right to file the fresh suits u/s 202 after 25-5-1961 when the Board dismissed the revision against the Collector's order dated 28-3-1951 and the said order of the Collector became final. It is well known that if a suit is dismissed on a preliminary ground or on the ground that it is premature, its judgment does not operate as *res judicata* in the subsequent suit. (See *Abdullah Ashgar Ali Khan v. Ganesh Dass* (AIR 1917 PC 201) : (15 All LJ 889), *Amba Prasad Vs. Abdul Noor Khan and Others*, and *Tarak Chandra Dutta Vs. Jagdish Chandra Deo Dhabal Deb*, .

51. Now, I consider the third contention raised by Sri Sripat Narain Singh., He has contended that as formal delivery of possession was not obtained by the opposite parties Nos. 4 to 9 after their reinstatement in the proceedings u/s 27 of the U. P. Act 10 of 1947, therefore the suits in question were not maintainable. In my view, the provisions of Order 21 Rule 36 C. P. C. were not attracted to the facts of the instant case. The proviso to Section 27 (3) was a statutory declaration of the rights of the landlords, the persons who were inducted earlier by the landlords and the persons subsequently inducted by way of reinstatement u/s 27. The persons inducted earlier by the Zamindars were declared to be the sub-tenants of the subsequently reinstated person. Rent became payable by such sub-tenants to the subsequently reinstated persons. I fail to see how and why it should be held to be necessary for the subsequently reinstated person to have sought a formal delivery of the land as against the landlords. There was no such necessity and it is not open to the sub-tenant to raise the said contention.

It has not been shown to us that the landlords at any time disputed the rights of the subsequently inducted persons to deal with their sub-tenants. In this connection, the Division Bench case reported in 1962 All LJ 133 is a clear authority that a recourse to Order 21 Rule 36 C. P. C. is not called for in the circumstances such as are present in the instant case. Sri Sripat Narain Singh sought to contend that the said Division Bench did not lay down the correct law on the ground that Section 141 C. P. C. read with Section 243 of the U. P. Tenancy Act 1939 were not noticed by the Division Bench. I do not think that the "correctness of the Division Bench can be assailed on the said ground. It is well known that Section 141 does not apply to execution proceedings and Order 21 Rule 36 C. P. C. cannot be pressed into service on the basis of Section 141.

52. The two writ petitions shall stand dismissed with costs.

K.C. Agarwal, J.

53. This writ petition challenges the validity of the judgments and orders of respondents Nos. 1 to 3 dated 15-10-1969, 2-5-1968 & 6-1-1968. This case has

had a chequered history resulting into a hotly contested litigation spreading over a quarter of a century. The end of this litigation is, however, still not in sight.

54. It appears that Uma Singh, the predecessor-in-interest of the respondents Nos. 4 to 9 of writ petition No. 4292 of 1969 trespassed on the land in dispute on or about 12th December, 1939. The Zamindar instituted a suit for his ejectment u/s 180 of the U. P. Tenancy Act. The suit was resisted by the defendants but was decreed on March 38, 1.943. The Zamindar put the decree into execution and succeeded in dispossessing the defendants on 21st May, 1943. The Zamindar thereafter let out the land to the petitioner. After the coming into force of the U. P. Tenancy (Amendment) Act, 1947, Uma Singh and respondents Nos. 4 to 9 filed an application for re-instatement u/s 27 (1) (c) of the U. P. Tenancy (Amendment) Act, 1947 (hereinafter referred to as "the Amending Act"). The application was rejected by the trial court.

In appeal, the Collector allowed the application on 28th March, 1951 and declared the petitioner as sub-tenant for three years under the provisions of subsection (3) of Section 27 of the Amending Act. A revision was thereafter filed by the petitioner before the Additional Commissioner who recommended to the Board of Revenue that the order passed for the reinstatement of the respondents 4 to 9 was illegal and, therefore, was liable to be quashed. The Board of Revenue accepted the recommendation of the Additional Commissioner and allowed the revision by the order dated 31st January, 1955 and directed the application filed for their reinstatement by the respondents 4 to 9 to be rejected. Aggrieved by the aforesaid order of the Board of Revenue, the respondents 4 to 9 filed a writ petition in this Court.

The writ petition was allowed by a learned Single Judge on 29th September, 1955 and the order of the Board of Revenue was quashed. Against the judgment of the learned Single Judge, a special appeal was filed by the petitioner. The appeal was dismissed on 1st October, 1960. Consequent upon the dismissal of the special appeal, the Board of Revenue again decided the revision on 25-5-1961. This time the Board of Revenue found that the order of reinstatement made by the Collector on 28-3-1951 was eminently just and proper. On this finding the revision was rejected. The petitioner again preferred a writ petition in this Court, which was dismissed on 17th June, 1965.

55. It appears, however, that before these proceedings u/s 27 (1) (c) of the Amended Act were terminated, the respondents 4 to 9 filed a suit for the ejectment of the petitioner u/s 202 of the U. P. Zamindari Abolition and Land Reforms Act, 1951 (hereinafter referred to as the "Act No. 1 of 1951"). Finding that the application filed by the respondents 4 to 9 for reinstatement has been rejected by the Board of Revenue, the trial court dismissed the suit of the said respondents on 3-5-1955. After the order of the Board of Revenue was set aside in the writ petition, a second suit u/s 202 of Act No. 1 of 1951 was filed by respondents 4 to 9 on 9th August, 1961. The suit was contested by the petitioner. It was, however, decreed on 1st January, 1968. The appeal preferred

by the petitioner before the Additional Commissioner and thereafter second appeal before the Board of Revenue were dismissed. Hence this writ petition.

56. This writ petition came up for hearing before Hon<sup>ble</sup> Section N. Dwivedi, J. As in his opinion, one of the questions involved relating to the acquisition of rights of Bhumidhar by respondents 4 to 9 was a question of general importance, therefore, he referred the same for consideration of a larger bench. The question referred was whether the respondents became Adhivasi of the land in dispute under the latter part of clause (b) of Section 20 of U. P. Act No. 1 of 1951. The aforesaid question was answered in the negative by a Division Bench of this Court on 21st February, 1973. The writ petition was thereafter listed before Gopinath, J. who finding that certain observations made by the aforesaid Division Bench presented some difficulty, referred the writ petition to a larger Bench. Consequent upon the said reference, the present Bench was constituted for deciding the writ petition.

57. The first submission made by the learned counsel for the petitioner was that the Board of Revenue committed an error in holding that the respondents 4 to 9 acquired the rights of hereditary tenant under Sub-section (2) of Section 180 of the U. P. Tenancy Act, 1939. According to his submission, under Sub-section (5) of Section 27 of the Amending Act, 1947, the status of a trespasser would not be converted into that of a hereditary tenant on the ground that the actual ejectment of such a trespasser took place after two years from the date of trespass. The learned counsel contended that u/s 180 (2) of the U. P. Tenancy Act, the rights of hereditary tenant could accre only if suit is not filed within the time or a decree obtained is not executed within limitation. But where, as here, a suit is filed within limitation, a trespasser would not become a hereditary tenant, as Sub-section (2) of Section 180 of the U. P. Tenancy Act would not come to the rescue of such a person.

58. In order to appreciate the contention of the learned counsel for the petitioner, it is necessary to refer, in brief, to the provisions of U. P. Act No. X of 1947. The Amending Act was titled as the "United Provinces Tenancy (Amendment) Act, 1947". The preamble of the said Act provided :

"Whereas it is expedient to amend certain provisions of the U. P. Tenancy Act, 1939 and to give relief to certain tenants ejected thereunder and also to provide for the better utilisation of the land ....."

A review of the provisions of the Amending Act would show that not only certain provisions of the U. P. Tenancy Act were amended but certain new provisions were also inserted by it. Amongst the new provisions the one with which we are concerned in the present case is Section 27. Section 27 provides for reinstatement of any person ejected from his holding or any part thereof :--

(a) u/s 165, of the Act for the non-payment of any amount not exceeding 1/4th of his annual rent.

(b) u/s 171 of the Act, otherwise than on the ground of an illegal transfer and by way of sale or gift.

(c) u/s 180 of the Act notwithstanding his having been recorded as an occupant after the 1st day of January, 1938. Such a person was required to file an application within six months from the date of the commencement of the Act, namely, 14th June, 1947. On an application being filed, a notice of the same was required to be given to the landholder as well as to the person, if any, subsequently admitted as a tenant. Sub-sec. (3) of Section 27 provided :--

"On receipt of an application under Sub-section (1) or Sub-section (2), the court shall give notice to the landholder and to the tenant, if any, in possession of the whole or part of such holding. After making such enquiry as may be necessary, if the Court is satisfied that the applicant was so ejected or dispossessed, it shall order that the applicant be reinstated in such holding or part thereof, as the case may be, and that any other person in possession of it be ejected therefrom :

Provided that if such holding or any part thereof is in the possession of any person to whom the landholder had let it out before the first day of September, 1946, such person not being a relation, dependent or servant of the landholder, the court instead of ordering the ejectment of such person, shall, notwithstanding the provisions of any law for the time being in force, declare him to be the sub-tenant of the applicant in respect of such holding or such part. The person so declared as a sub-tenant shall not be liable to ejectment until after the expiry of three years from the date of the declaration. In such a case, the rent payable by the applicant to the landholder shall be the rent payable by him for such land before ejectment or the amount calculated according to the circle rates, whichever is less, and the rent payable to the applicant by the person declared as sub-tenant shall be the amount payable by such person to the landholder, immediately before the declaration or twelve and a half per cent over and above the amount calculated according to the circle rates applicable to hereditary tenants, whichever is higher."

The other material provision, which is relevant for our purposes, is Sub-section (5) of Section 27 of the Amending Act, which reads :--

"(5) On reinstatement, the rights and liabilities of the applicant existing on the date of his ejectment or dispossession in respect of the holding or any part thereof from which he was ejected or dispossessed, shall revive subject to the proviso to Sub-section (3)."

As held by a Full Bench of this Court in *Ramesh Chand and Others Vs. Board of Revenue and Others*, , it appears to me that Section 27 was intended to amend the effect of Sections 165, 171 and 180. In substance, Section 27 was added as a proviso to each one of these three sections, it has been said in this connection by the Full Bench that (at p. 929) :--

"..... It has been seen that Section 27 of the Amending Act of 1947 operated as a

proviso to several sections of the Principal Act. instead of making the same detailed provision in Sections 165, 171 and 180 of the Tenancy Act separately, the Legislature thought it better to make a single separate provision to cover all those sections. Since the provisions of Section 27 were not bodily incorporated in some existing provisions of the Principal Act, they were to act only as a proviso thereto....."

It is thus clear that Section 27 was added as a proviso to Section 180 of the U. P. Tenancy Act as well. Consequently, a person who was dispossessed in a suit u/s 180 of the U. P. Tenancy Act brought by a landholder or a Zamindar, could also file an application u/s 27 (1) (c) of the Act for reinstatement. Subsequently admitted tenant by a landholder is further entitled under the proviso to Sub-section (3) to be declared as the subtenant of the person applying for reinstatement for a fixed period of three years from the date of the declaration. In the instant case, Uma Singh, the predecessor-in-interest of respondents 4 to 9 was dispossessed by the Zamindar in a suit filed u/s 180 of the U. P. Tenancy Act. According to the case of the Zamindar, the land was trespassed by Uma Singh on or about 12th December. 1939.

The suit was filed on 7th February, 1942 within limitation, as prescribed at that time. As a result thereof, on the application being filed for reinstatement u/s 27 (3) the respondents Nos. 4 to 9 were reinstated but since the petitioner was admitted as a tenant by the landholder, he was declared to be a subtenant for the period of 3 years. The effect of passing an order under Sub-section (3) of Section 27 of the Amending Act read with Sub-section (5) of Section 27 was to render the operative nature of the decree passed u/s 180 of the U. P. Tenancy Act into ineffectiveness. The person who was evicted u/s 180 of the U. P. Tenancy Act becomes entitled to get the rights which he had on the date of his ejection on the disputed land. The decree passed u/s 180 is virtually rendered to a state which has no value or no consequence. Dealing with the effect of a decree passed u/s 171 of the U. P. Tenancy Act in a similar circumstance, the Full Bench in *Ramesh Chandra v. The Board of Revenue* (1972 All LJ 925 supra) observed (at p. 930) :--

"When Sub-section (5) of Section 27 provides for the revival of the rights of the original tenant its necessary consequence and effect is the nullification of whatever rights may have initially accrued to the subsequently inducted person. The nullification is co-extensive with the revival. Since the pre-existing rights and liabilities of the original tenant revive, their revival can be effective only if the nullification of the rights and obligations of the subsequently inducted tenant is co-extensive in duration. The subsequently inducted tenant could not hence validly say that he was ever the hereditary tenant of the holding." The view taken in the aforesaid case was reiterated by another Full Bench of this Court reported in *Prem Singh and Others Vs. Hukam Singh and Others*, .

59. The question, however, is about the rights of a trespasser who was dispossessed in a suit u/s 180 of the U. P. Tenancy Act. *Shri Shripat Narain*

Singh, counsel appearing for the petitioner, urged that a trespasser has no right to continue in possession of a land and as he is liable to be evicted or dispossessed, therefore, even if an application of such a person u/s 27 (3) (c) is allowed, he would remain liable to eviction. Referring to Sub-section (5) of Section 27 of the Amending Act, the learned counsel contended that under the aforesaid provision, the rights would get revived provided there were any, before eviction of a person applying for reinstatement. In a case of trespasser, he did not have any right, hence Sub-section (5) of Section 27 would not protect such a person. In the alternative, the counsel contended that as the respondents 4 to 9 had been sued by the Zamindar or the landholder within two years of their entering into possession, therefore, even if some right is said to be conferred on a trespasser by the aforesaid Amending Act, the same would not be available to the respondents.

60. Before dealing with the arguments of the learned counsel for the petitioner, it may be pointed out that by the Amending Act of 1947. the period of limitation for filing a suit against a person unauthorisedly taking possession of a land, was reduced from three years to two years. Previously, Section 180 laid down that in case a suit was not brought to evict a person within the period of three years as mentioned in the schedule, such a person would become a hereditary tenant. As a result of the amendment, a trespasser was entitled to get the rights of hereditary tenant, if a suit was not brought within two years.

61. The reduction of the period of limitation for a suit u/s 180 of the U. P. Tenancy Act from 3 years to 2 years would give rise to two kinds of cases viz. (i) where the suit was filed u/s 180 of the U. P. Tenancy Act within two years from the date of trespass and a decree obtained thereof and (ii) where the suit was filed beyond two years but within three years and a decree for dispossession was obtained. On the basis of the above categories, the learned counsel for the petitioner contended that the case falling in the first category would be one to which the provisions of Sub-section (2) of Section 180, as amended, did not apply and that such a person could not become a hereditary tenant. I am unable to accept the sub-mission.

In order to apply the provisions of Sub-section (5) of Section 27 read with Section 32 of the Amending Act, what was required to be seen was whether the person making an application for reinstatement had acquired the rights of hereditary tenant by the date of his dispossession or not. If under the provisions of the U. P. Tenancy Act, after amendment by U. P. Act No. X of 1947, the applicant for reinstatement had completed two years' possession on the date of his dispossession, he would become a hereditary tenant. In determining this question the fact that a suit had been filed against such a trespasser in the past within two years or three years has to be ignored. As observed above, a decree passed u/s 180 of the U. P. Tenancy Act was nullified. The necessary consequence of the nullification would be as if the suit was not filed.

Therefore, those trespassers who had completed two years of possession before

they were dispossessed under the U. P. Tenancy Act, as it stood before the Amending Act, would be entitled to continue in possession after their reinstatement. But, the trespassers who did not even complete two years at the time when they were previously evicted or dispossessed, were liable to be dispossessed. It, therefore, appears to me that the completion of two years of possession for acquiring the rights of hereditary tenant, as amended by U. P. Act No. X of 1947 must also cover those cases where suits had been filed against the trespassers within two years of their adverse possession. Of course, a trespasser who had not completed even two years at the time when he was evicted, would still be liable to be evicted. The view taken by me is supported by the decision of this Court reported in *Shriram Pathak v. Board of Revenue* (1956 All LJ 343). Dealing with this case, the Full Bench in *Ramesh Chandra's case* (1972 All LJ 925 sup observed (at p. 931) :--

"The view that on reinstatement preexisting rights revive retrospectively is supported by a decision of a Bench in *Sri Kam Pathak v. Board of Revenue*. In that case a trespasser mentioned in clause (c) of Section 27 (1) was reinstated. After reinstatement a suit for his ejectment was again filed. Previously the period of limitation for a suit u/s 180 of the Tenancy Act for ejectment of a trespasser was three years. By Section 32 of Act X of 1947 the period was reduced to two years. The Bench held that for the second suit for ejectment (filed after the commencement of Act 10 of 1947) the applicable period of limitation will be two years. It was also held that if the reinstated trespasser had completed two years of possession prior to his original ejectment, he would be entitled to retain possession after reinstatement and will not be liable to ejectment again. But if he had not completed two years, at that time, the second suit for ejectment will succeed. This shows that the period of possession prior to the original ejectment was liable to be recognised and was a material circumstance for deciding the rights in the second suit for ejectment. After completion of two years a trespasser became a hereditary tenant u/s 180 (2) U. P. Tenancy Act. The effect of the reduction in the period of limitation was retrospectively made applicable to the possession of the trespasser prior to the commencement of Act 10 of 1947, as a result of the retrospective operation of the order of reinstatement. The decision in *Sri Ram Pathak's case* was upheld by a Full Bench in *Kedar Nath v. Jamuna* (1964 All LJ 442)."

62. A doubt was, however, cast by the learned counsel on the correctness of the view taken in the above two cases. I am, however, not prepared to accept the same. To me, it appears that Sub-section (5) of Section 27 of the Amending Act read with Section 32 leaves no room for doubt that a trespasser who had completed two years of possession before he was evicted would be entitled to become a hereditary tenant and, as such, he is not liable to be dispossessed after his reinstatement. The language used in Sub-section (5) of Section 27 clearly shows that the rights existing on the date of his ejectment are required to be seen.

63. The second question argued was that since the respondents 4 to 9 were neither the landholders nor the hereditary tenants, therefore, the suit filed by them u/s 202 of U. P. Act No. I of 1951 is not maintainable. The submission made is not tenable. The word "landholder" has not been defined in Act No. I of 1951. Section 3 (26) of Act I of 1951 adopts the definition of the word "landholder" given in the U. P. Tenancy Act for the purposes of the former Act. The definition of the word "landholder" includes within itself not only a person to whom rent is payable but also a person to whom but for the contract the rent would have been payable. By Sub-section (3) of Section 27 of the Amending Act, the possession of a person reinstated is that of the landholder qua the person who is declared to be a sub-tenant for a period of three years. By the fiction of law thus created by Sub-section (4) of Section 27 of the Amending Act the position of the respondents 4 to 9 was that of the landholders.

It would be seen that a suit u/s 202 of U. P. Act No. I of 1951 can be filed by a landholder. Accordingly, the respondents 4 to 9 being the landholders had the right to file the suit against the petitioner on the basis that the latter being an Asami was liable to eviction under the aforesaid provision. Furthermore, the learned counsel for the petitioner is not right in submitting that the respondents 4 to 9 did not become sirdars under Act I of 1951. Section 19 of the Act gives the categories of the persons on whom the rights of sirdars were conferred by the said provision. It covers within itself even a person who can be deemed to have held the land for the purposes of acquisition of rights under this provision. The term "deemed to be held" connotes a notional holding by a legal title. The word "deemed" makes it clear that a thing is not what in the eye of law it is supposed to be. Accordingly, the respondents, even if they did not succeed in obtaining possession of the land before the date of vesting, they would be deemed u/s 19 of Act I of 1951 to be sirdars. By virtue of Sub-section (5) of Section 27 of the Amending Act, the respondents 4 to 9 have already been held by me to have acquired rights of hereditary tenant.

64. The third submission made by the learned counsel was that the respondents 4 to 9 did not obtain formal delivery of possession after the order of reinstatement was passed under Sub-section (3) of Section 27 of the Amending Act, therefore, the rights of the said respondents acquired under the aforesaid order were lapsed. In other words, the argument put forward was that since the said respondents did not apply for formal delivery of possession under Order XXI, Rule 36 of the Code of Civil Procedure, they obtained no rights as hereditary tenants by virtue of the decree obtained by them. The submission made is devoid of substance. Order XXI, Rule 36 of the CPC is not meant to be applied to a case like the present.

This is a rule under which for example, a plaintiff who has been dispossessed of the rents and profits by his tenants but who, by reason of their being tenants in possession with a lawful title is not entitled to be put into actual possession, is enabled to be put into possession of his proprietary rights, of which he has been

deprived by the defendants. But where, as here, the petitioner himself was a party in the proceedings u/s 27 of the Amending Act, the respondents 4 to 9 were not required to obtain formal delivery of possession. The order, by which the respondents 4 to 9 had been declared entitled to take back possession, was binding on the petitioner. The Amending Act had only imposed the bar prohibiting the reinstated tenant from obtaining possession for three years. In the circumstances, the question of obtaining formal possession did not arise.

65. The controversy relating to the requirement of obtaining formal possession came up for consideration before a Division Bench of this Court in *Ganga Saran v. Board of Revenue* (1962 All LJ 133). In this case the view taken was that the provisions of Order 21, Rule 36 are not applicable to a case where an order of reinstatement is obtained u/s 27 of the Amending Act, 1947. I am in respectful agreement with the view taken in that case. The learned Judges have given a number of reasons in support of their conclusion. I need not mention the same in my judgment. As already stated above, Order XXI, Rule 36 applies only where the property was in exclusive possession of a person not bound by the decree and entitled to remain in possession. The present is not a case of such category.

66. The last submission made by the learned counsel was that the judgment given by the Authorities is barred by the principle of *res judicata*. While giving the facts I mentioned in the beginning that the respondents 4 to 9 filed a suit u/s 202 of U. P. Act No. I of 1951 against the petitioner. The said suit was dismissed by the trial court on 3-5-55 as the application for reinstatement made by the respondents 4 to 9 u/s 27 stood rejected on the date when the said suit filed u/s 202 came up to be decided. While dismissing the suit the trial court observed that as the order of the Collector holding the respondents 4 to 9 to be entitled to get reinstated had been set aside, therefore, the possession of the petitioner was no longer that of an Asami. Relying upon the aforesaid observations that "the possession of the defendant is no longer that of Asami," the learned counsel urged that the petitioners were not liable to be evicted u/s 202 of Act I of 1951.

The submission made is wholly untenable. It must not be forgotten that the suit filed by the respondents 4 to 9 had been dismissed as they were not found to be entitled to get the relief because of the rejection of their application u/s 27 of the Amending Act. The Court was neither called upon nor had, in fact, decided the rights or title of the petitioner at that time. The observation made by the trial court in that suit was to be read in the context in which it was made. Read in that context it will have to be found that neither was, any decision arrived at nor any finding recorded in that case that the petitioner was not Asami. As the trial court was dismissing the suit on the ground that the respondents 4 to 9 had no right to maintain the suit, he made consequential observation to the effect that the petitioner was not an Asami. In these circumstances the finding given in the above suit cannot be said to operate as *res judicata*.

67. Before closing the judgment, I may observe that the present law relating to the interpretation of Section 27 of the Amending Act, 1947 was laid down by this

Court in 1956. More than 20 years have passed since the above view was taken. It will not now be advisable to take a different view after the lapse of over 20 years, specially when hundreds of the cases relating to the acquisition of rights on the basis of Section 27 of the Amending Act have been decided on the basis of Shriram Pathak's case (1956 All LJ 343 ) The provisions of Section 27 of the Amending Act are now more or less dead as no dispute in respect to the rights accruing thereunder are pending decision, in these circumstances it does not appear proper to change the view taken in that case and not to adhere to the same. In Raj Narain Pandey and Others Vs. Sant Prasad Tewari and Others, while dealing with the desirability of overruling a decision of long standing the Supreme Court observed (at p. 294) :--

"A decision of long standing on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a higher court not strictly bound itself by the aforesaid decision ..... A different view would not only induce an element of uncertainty and confusion, but would also have the effect of unsettling the transactions which might have been entered into on the faith of that decision."

68. I am of the opinion that the present is a fit case for invoking the doctrine of stare decisis. I would, therefore, not like to take a view contrary to the one taken in Shriram Pathak's case, (1956 All LJ 343) even if I am satisfied that the same was incorrect.

69. I have already stated above that Shriram's case (1956 All LJ 343 supra) laid down the law correctly. In my opinion, therefore, the writ petition has no substance and is liable to be rejected.

70. In the result, the writ petition fails and is dismissed, with costs.

71. These two connected writ petitions are dismissed with costs.