

**(1970) 11 P&H CK 0034**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ No's. 1410, 1430, 1454, 1473, 1590 and 1591 of 1970

Shanthi Parkash and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

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**Date of Decision :** 26-11-1970

**Acts Referred:**

Constitution of India, 1950 — Article 13(3), 14, 226

East Punjab Utilization of Lands Act, 1949 — Section 12, 14, 14A, 6

**Citation :** AIR 1971 P&H 447

**Hon'ble Judges :** C.G. Suri, J

**Bench :** Single Bench

**Advocate :** K.C. Puri and S.K. Goyal, for the Appellant; C.D. Dewan, A.A.G., for the Respondent

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**Judgement**

1. Civil Writs Nos. 1430, 1473, 1410, 1454, 1590 and 1591 of 1970 are being disposed of together by this judgment as they involve certain common questions of law. The facts in some of these cases are not exactly the same but these can be discussed separately, in so far as they affect the final decision, after the legal principles involved have been clearly grasped by reference to a large number of rulings and statutory provisions cited before me by the learned counsel for the parties. The references in the general discussion in the earlier part of the judgment are to the facts, averments, pleadings or annexures in Shanti Parkash and others v. The State of Haryana and others (Civil Writ No. 1430 of 1970).

2. The petitioners in all these cases are lease-holders of lands situated in different villages in the State of Haryana, respondent No. 1. They were granted leases of barren or banjar lands u/s 5 of the East Punjab Utilisation of Lands Act, 1949(East Punjab Act No. 38 of 1949, which may hereinafter be referred to, for the sake of brevity, as "the Act"). The leases were granted by the Collector, respondent No. 2 in or about the year 1951 for long terms and wherever the period of lease as originally fixed was shorter, it was ultimately extended to a period of 20 years. In some of these cases, the original or the extended period of

the lease is due to come to an end within a year or so. The lease holders claim to have sunk a good deal of labour and capital in improving and developing this land and in making it fit for cultivation. Respondent No. 2 has, however, ordered rather a premature determination of these leases and seeks to take over possession of the lands u/s 6 of the Act without payment of any compensation and the various reasons given for this step are that the lessees have been guilty of non-payment or irregularity in the payment of rents or that the land had been sub-let by them or that, in contravention of the provisions of the Act, crops other than food and fodder had been grown on the demised lands.

3. The vires of certain provisions of the Act and in particular of Section 6, which may seem to have caused the maximum trouble in all quarters, has been challenged in these cases. In order to appreciate the various submissions of the learned counsel for the parties and for properly applying the principles of law involved, it would be necessary to know when and why the main Act came to be passed and why certain sections came to be inserted in the Act later on. It would also be necessary to keep in mind the fact whether the Act or the sections that came to be added afterwards were pre-Constitution or post-Constitution legislative measures and what were the circumstances under which the principal or the amending Acts came to be passed.

4. On the partition of the joint Punjab in 1947, a number of displaced agriculturists had come from West Pakistan to the Eastern Portion of the province falling to the share of India. The necessity of rehabilitating them together with the fact that vast areas of valuable land in East Punjab had been allowed to grow banjar or barren because of the land-owners' failure to cultivate them for a certain number of harvests may appear to have led to the passing of the Act in 1949. Even though the Act was first published in the East Punjab Government Gazette on a date on which, according to the Preamble to the Constitution of India, the Constituent Assembly gave us that Constitution, it is agreed on all hands that the Act, except for the sections that came to be inserted later, is a pre-Constitution legislative measure. This is because the Constitution of India was actually enforced on the inauguration of the Republic, exactly two months after the publication of the Act. The Preamble of the Act says that it had been enacted for the purpose of providing for the utilisation of lands in (East) Punjab.

5. The Act is not a very lengthy piece of legislation and it would not take us long to get an idea of the general scheme and the various provisions of the Act. The first two sections give us the short title, the extent and certain definitions. Section 3 gives powers to the Collector of the District to take possession of any land which had remained continuously uncultivated for six or more harvests. He could do so only after giving the owner a reasonable opportunity of being heard. Section 4 provides for payment of compensations to the land-owner and the section that follows gives the Collector the powers to lease out the land on such terms and conditions that he thought fit for the purpose of growing only food and fodder crops. The proviso to the section lays down the minimum and maximum

periods of the lease at seven years and twenty years respectively. According to Section, 13, the instrument of lease, if executed in writing, did not require any attestation, stamp or registration. It is not necessary to mention at this stage the other provisions of the Act except for Section 6 which has undergone a material change since the Act was passed.

6. Section 6, as originally enacted in 1949, provided that where the Collector was satisfied on the land-owner's application that the land-owner had made arrangements for the cultivation of his land, the lease could be terminated by the Collector and the land owner put in possession of his land. The land owner was required in that case to refund the proportionate amount of the compensation that he had received and moreover the lessee was allowed to reap and harvest the standing crops that had been sown by him. This section along with Section 9 which provided for the levy of a penalty on the owner's failure to cultivate the land were apparently considered unnecessary and were omitted by an amending Act in 1951. Even though there was no provisions in the Act thereafter for determination of a lease and taking over of possession of the land by the Collector, the void created by the omission of Sections 6 and 9 in 1951 remained unfilled for a number of years until the present Section 6 was inserted in the Act by an amendment Act No. 24 of 1957.

7. According to the Statement of Objects and Reasons to the Punjab Amendment Act No. 24 of 1957, it had been considered necessary to insert the present Section 6 in the Act because Clause 11 of the prescribed lease deed (see Annexure "R/1") authorised the Collector to terminate a lease and to take possession of the land in case of breach of any of its terms or conditions but there was no specific provision in the Act from which this power could be described to have been derived by the Collector. Section 6 was, therefore, inserted in the Act in almost the same words as Cl. 11 of the prescribed lease deed. It may be observed that these amendments were made many years before the Full Bench decision of this Court in *The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another*, saw the light of the day. This Full Bench decision was upset by the Supreme Court vide *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, . The Punjab Legislature was, however, not exercised at the time over the question whether Section 6 was supplemental to or substitutive of the other remedies available to the Collector under the ordinary or general law of the land. There is no provision in the Amending Act, or in the parent Act expressly giving this section a retrospective effect.

8. When the ruling of the Supreme Court in the case of *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, saw the light of the day , it was felt that Section 6 of the Act could also be found to suffer from the same defects from which Section 5 of the Punjab Public Premises (Eviction and Rent Recovery) Act, 11959 (Punjab Act No. 31 of 1959) or similar sections like Sections 4, 5 and 6 of the Public Premises (Eviction of Unauthorised Occupants)

Act, 1958 (Central Act No. 32 of 1958) had been struck down by the Supreme Court and by some High Courts in a number of cases which would be mentioned hereafter in this judgment. The defects pointed out in the Central Act No. 32 of 1958 were sought to be remedied by the insertion of S. 10-E in that Act but it has been held by a Single Bench of Delhi High Court in *Dr. Bawa R. Singh V. Union of India* ILR 1970 P&H 261 that even this amendment had failed to achieve its purpose of removing the vice that had existed in Section 4 to 6 of that post-Constitution enactment. A different view may, however, appear to have been taken by a Single Bench of this Court in *M.S. Oberoi Vs. Union of India (UOI)*, . Either of these conflicting views may appear to be of little help to us in the present case as we are considering the vires of a section of the Act which is a piece of pre-Constitution legislation. Shri Mittal, the learned counsel for some of the Civil Writ Petitioners tells me that the Single Bench decision in *Dr. Bawa R. Singh*'s case has since been approved by a Full Bench of the Delhi High Court but as the Judgment of the Full Bench has not been made available. I am not in a position to say how far that ruling would have a bearing on the Civil Writ petitions now before me.

9. Even though the rulings in the cases of *Northern India Caterers Pvt. Ltd.* AIR 1963 P&H 407 and *Bawa R. Singh Etc.* ILR 1970 P&H 261 were in respect of amendments made in post-Constitution pieces of legislation, it was felt that these rulings could create a difficulty even in respect of the provisions of the Act notwithstanding the fact that it was a pre-Constitution piece of legislation. To get over any possible difficulty, Section 14-A has been inserted in the Act by Haryana Ordinance No. 8 of 1970 which was published in Haryana Government Gazette Extraordinary dated 18-9-1970 by a notification bearing an even date. Section 14-A as inserted by this Ordinance runs as follows:-

"Bar of jurisdiction-No civil court shall have jurisdiction to entertain any suit or proceedings in respect of the eviction of any person to whom land has been leased u/s 5. "

10. Section 1 (2) of the Ordinance seeks to give retrospective effect to Section 14-A of the Act by providing that Ordinance shall be deemed to have come into force on the first day of January, 1968. All the orders that are impugned in these writ petitions had been passed u/s 6 of the Act after the date mentioned in Section 1(2) of the Ordinance.

11. The main submission of the learned counsel for the petitioners. Sarv Shri Puri and Mittal, is that the present Section 6 of the Act, as inserted in 1957, under which the impugned orders of eviction were passed by respondent No. 2 was ultra vires as it was violative of the petitioners' fundamental rights and that the insertion of Section 14-A in the Act has not made any improvement in the situation so far as the respondents are concerned. The rulings of the Supreme Court and various High Courts that are relied upon in this connection referred to a doctrine which came to be gradually known as the doctrine of eclipse and revival as the case law went on developing. This doctrine revolves round the

interpretation of Art. 13 of the Constitution of India. Before I reproduce this Article below, it may be observed that according to the provisions of Art. 12, the words "the State" in Art. 13 would include the Government and Parliament of India and also the Government and Legislature of any State. Article 13 of the Constitution of India is in the following words:

"13. Laws inconsistent with or in derogation of the fundamental rights-

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall to the extent of the contravention be void.

(3) In this article, unless the context otherwise requires,-

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, Custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. "

12. One of the questions that arises is whether the present section 6 which was inserted in the Act in 1957 could also be called a pre-Constitution law. Shri Mittal relies in this connection on the fact that this section was not given any retrospective effect by the statute. Shri Dewan, the learned Additional Advocate General for the State of Haryana relies on sub-clause (b) of Clause (3) of Art. 13 in support of his argument that Section 6 is to be taken to be a "law in force" within the meaning of Clause (1) of Art. 13(1) immediately before the commencement of the Constitution of India and that this section being a part of a pre-Constitution piece of legislation could also be subject to the doctrine of eclipse and revival which applies only in cases of pre-Constitution laws. Sub-clause (b) seems to make it clear that laws in force include only those laws which had been passed or made by a Legislature or other competent authority in the territory of India before the commencement of the Constitution and which had not been previously repealed. This would be so notwithstanding the fact that any such law or any part thereof may not have been in operation either at all or in any particular area at the time of the commencement of the Constitution. The latter part of the sub-clause which could be described as the non obstante provision would not necessarily imply that a provision of a pre-Constitution Act which came into force for the first time after the commencement of the Constitution could also be taken as a law in force at the time of that commencement within the meaning of Art. 13(1) of the Constitution of India. The phraseology of sub-clause (b) seems to suggest that the law must have taken

shape on the statutory anvil before the commencement of the Constitution and should not have been repealed upto that time and that only in that case it would not matter that the operation of that provision or part of the law had been suspended for some time or in any particular area. In this connection, Shri Dewan had cited before me the case of Dasu Khan and Others Vs. Mohan Bhagat and Others, , but I find that the ruling does not in any way advance the proposition that has been canvassed by him. The ruling contemplates that even though an amending Act is not ordinarily taken as a new and independent statute, it can nevertheless be a law independent and complete in itself in certain cases. On the other hand, I find that in Deep Chand Vs. The State of Uttar Pradesh and Others, , the Hon"ble Judges of the Supreme Court had been pleased to quote with approval the following passage from the Constitutional Limitations by Cooley:-

"When a statute is adjudged to be unconstitutional, it is as if it had never been..... and what is true of an Act void in toto is true also as to any part of an Act which is found to be unconstitutional and which, consequently, is to be regarded as having never at any time been possessed of any legal force. "

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" The statue void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection but must be re-enacted. "

13. It may, however, appear that when Cooley made these general observations about Constitutional properties he did not have in mind the provisions of Art. 13 of the Constitution of India.

14. The following observations from the majority judgment of the Supreme Court in Deep Chand Vs. The State of Uttar Pradesh and Others, could also be reproduced here with advantage:-

"The combined effect of Arts. 13, 31, 245(1) and 246 may be stated thus: Parliament and the Legislatures of States have power to make laws in respect of any of the matters enumerated in the relevant lists in the Seventh Schedule and that power to make laws is subject to the provisions of the Constitution including Art. 13 i. e. , the power is made subject to the limitations imposed by Part III of the Constitution. The general power to that extent is limited. A Legislature, therefore, has no power to make any law in derogation of the injunction contained in Art 13. There is a clear distinction between the two clauses of Art. 13. Under Clause (1) a pre-Constitution law subsists except to the extent of its inconsistency with the provisions of Part. III, whereas, no post-Constitution law can be made contravening the provisions of Part III, and therefore the law, to that extent though made, is a nullity from its inception. When Clause (2) of Art. 13 says in clear and unambiguous terms that no State shall make any law which takes away or abridges the rights conferred by Part III, it will not avail the State to contend either that the clause does not embody a curtailment of the power to

legislate or that it imposes only a check but not a prohibition. A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other Constitutions; Nor can it be argued that the words "any law" in the second line of Art. 13(2) posits the survival of the law made in the teeth of such prohibition. The argument that a law can come into existence only when it is made and therefore any law made in contravention of that clause presupposes that the law made is not a nullity may be subtle but is not sound. The words "any law" in that clause can only mean an Act passed or made factually, notwithstanding the prohibition. The result of such contravention is stated in that clause. A plain reading of the clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law; the law made in spite of the prohibition is a still-born law.

The doctrine of eclipse has no application to post-Constitution laws infringing the fundamental rights as they would be ab initio void in toto or to the extent of their contravention of the fundamental rights.

Whether the Constitution affirmatively confers powers on the legislature to make laws subjectwise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power; (ii) the Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the Lists of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces the said power by the limitations laid down in Part III of the Constitution; (iii) it follows from the premises that a law made in derogation or in excess of that power would be ab initio void wholly or to the extent of the contravention as the case may be; and (iv) the doctrine of eclipse can be invoked only in the case of a law valid when made, but a shadow is cast on it by supervening constitutional inconsistency; when the shadow is removed, the impugned Act is freed from all blemish or infirmity. "

15. Article 13 of the Constitution of India then came in again for interpretation by the Hon'ble Judges of the Supreme Court in *Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others*, where it was laid down as follows:

"The doctrine of eclipse would apply to pre-Constitution laws which are governed by Art. 13(1) and would not apply to post-Constitution laws which are governed by Art. 13(2).

The words "to the extent of" in Art. 13 do not import any idea of time. They only import the idea that the law may be void either wholly or in part and that only such portions will be void as are inconsistent with Part III or have contravened Part III and no more.

The pre-constitution laws which were perfectly valid when they were passed and the existence of which is recognised in the opening words of Article 13(1) revive by the removal of the inconsistency in question. There is a difference between

the language and scope of Art. 13 (1) and (2). A plain reading of the words in Art 13(1) and Art. 13(2) brings out a clear distinction between the two. Article 13(1) declares such pre-constitution laws as are inconsistent with fundamental rights void. Article 13(2) consists of two parts; the first part imposes an inhibition on the power of the State to make a law contravening fundamental rights, and the second part, which is merely a consequential one, mentions the effect of the breach by providing that the law shall be void to the extent of the contravention. Therefore, where there is a question of a post-Constitution law, there is a prohibition against the State from taking away or abridging the fundamental rights and there is a further provision that if the prohibition is contravened the law shall be void to the extent of the contravention. In view of this clear provision, unlike a law covered by Art. 13(1) which was valid when made, the law made in contravention of the prohibition contained in Art. 13(2) is a still-born law either wholly or partially depending upon the extent of the contravention. Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse.

The application of the doctrine of eclipse in one case and not in the other case does not depend upon giving a different meaning to the word "void" in the two parts of Art. 13. The meaning of the word "void" is, for all practical purposes the same in both the clauses namely, that the law is ineffectual and nugatory and devoid of any legal force or binding effect. But there is one vital difference between pre-constitution and post-constitution laws in this matter. The voidness of the pre-constitution laws is not from inception. Such voidness supervened when the Constitution came into force; and so they existed and operated for sometime and for certain purposes. The voidness of post-constitution laws on the other hand is from their very inception and they cannot therefore continue to exist for any purpose. This distinction between the voidness in one case and the voidness in the other arises from the circumstance that one is a pre-constitution law and the other is a post-constitution law.

"The application of the doctrine arises from the inherent difference between Art. 13(1) and Art. 13(2) arising from the fact that one is dealing with pre-constitution laws and the other is dealing with post-constitution laws, with the result that in one case the laws being not still-born the doctrine of eclipse will apply while in the other case the laws being still-born there will be no scope for the application of the doctrine of eclipse. "

16. According to the doctrine of eclipse and revival, a still-born measure never breather any fresh air and was incapable of being revived as it had never come of life. The same cannot, however, be true of a measure that was in good health when it came into being. A blow or setback caused in its health by the subsequent amendment of or change in the Constitution can be remedied in a blood transfusion, a vital injunction, a surgical transplant or excision of tissue that had atrophied by coming under the shadow. A shadow can be cast by anyone of the two bodies coming into the line of a ray of the health giving

sunshine and the change or shift in the position of either body could have the effect of removing the shadow or eclipse. It may, therefore, appear immaterial whether the shadow had been removed by a change or amendment in the Constitution of India or in the Act which had come under the shadow. The vitality in an animate organism can at times sent life coursing through the grafted tissue in the body and lead to such a complete synthesis or merger that it is not possible to tell after a time that any portion was unnaturally grafted into the main body. Section 6 had, therefore, become a part and parcel of the Act which was a pre-Constitution piece of legislation and the doctrine of eclipse and revival would be fully applicable to our case. Section 14-A has the effect of taking away one of the two alternative remedies and removes the shadow that had, if at all, appeared in Section 6 of the Act in view of the judicial pronouncements of the Supreme Court in the case of *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, . If we were to reverse the chronological order in which Sections 6 and 14-A were inserted in the Act, there could not possibly be any objection with regard to the Collector having been left with two alternative remedies and having a chance of discriminating as to whether he would apply the harsher or the milder remedy in the case of any particular individual. This alone may suggest that Section 6 is not such a dead wood that we may find it impossible to infuse life into this piece of legislation. I find it difficult to appreciate the argument of Shri Mittal that by inserting S. 14-A into the Act, the Legislature has carried out an amendment in a post-Constitution law and not in a pre-Constitution Act. It may be that Section 14-A was enacted in order to remove a possible threat to the vires of the present Section 6 but the section continues as before without any changes or amendments. There appears to have been nothing wrong in carrying out the amendment to remove certain objections which could be levelled against any provision of a pre-Constitution Act on the score of duplicate remedies to escape the application of the ratio laid down in the ruling of the Supreme Court in the case of *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, . As observed in *B. Shama Rao Vs. The Union Territory of Pondicherry*, , a decision is binding not because of its conclusions but in regard to its ratio and the principles laid down therein.

17. Shri Dewan tried to distinguish the Supreme Court ruling in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, on the ground that the sections of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act of 1959 which had been found to be ultra vires were only directory in nature in view of the use of the word "may". This word seems to give the Collector a wider option in the matter of the choice of any one of the two alternative remedies than would have been the case if the word used had been "shall". In Section 6 of the Act which is impugned in the present case, the word used is "shall". This argument may seem to ignore the words "without prejudice to any right or remedy" which immediately follow the word "shall" in Section 6. In spite of the use of the word "shall", the said expression or phrase may seem

to preserve for the benefit of the Collector all previous rights and remedies which he had under the law against the leaseholder guilty of any default or breach of the terms and conditions of the lease in addition to the remedy conferred by Section 6. The phraseology leaves no doubt in one's mind that more than one alternative remedies had been reserved for the Collector for proceeding against a defaulting lease-holder. The erstwhile existing remedies which the expression mentioned above seeks to preserve for the Collector were, however, illusory and the very scheme of the Act may suggest that the only suitable remedy that the Collector could follow against a defaulter lease-holder was the remedy of the determination of the lease and taking over of possession of the land u/s 6 of the Act. This aspect of the case can, however, be dealt with better while discussing the next submission made by the counsel for the petitioners.

18. Shri Puri's contention was that the insertion of Section 14-A in the Act has not brought about any material improvement in the situation because even after barring the jurisdiction of the Civil Courts, the Collector would still be left with the remedies that he had under the general or common law. His contention is that the Civil Courts never had any jurisdiction in disputes between landlords and tenants arising out of leases of land and that the doing away with the jurisdiction of the Civil Courts is a fortuitous act as the revenue Courts had jurisdiction in such matters and their jurisdiction has been left untouched or unaffected by the recent insertion of Section 14-A in the Act.

The entire scheme of the Punjab Tenancy Act under which the Collector has jurisdiction to decide disputes arising out of leases of land between a landlord and a tenant may, however, suggest that the Collector would have jurisdiction u/s 77 of the Act only if there was a lis between two contending parties and that they appeared before an independent forum or tribunal and that the lis was to be disposed of in a judicial proceeding after giving full opportunity to the parties to lead their evidence and to be heard. In proceedings under the Act, however, the Collector does not have any contending parties before him and the landlord does not figure actively anywhere in the proceedings under the Act. According to the prescribed lease deed (Exhibit R/1), the Collector enjoys the pride of place by ranking as the first party and is described as the "lessor". The petitioner's own plea that the Collector is a judge in his own cause in such proceedings may appear to be inconsistent with the plea that the general remedy which the words "without prejudice to any right or remedy" in Section 6 of the Act seeks to preserve for the Collector is an alternative remedy. Section 6 may seem to create jurisdiction in the Collector of an exclusive type which is far different from the general remedies in the civil or revenue Courts and this creation of an exclusive jurisdiction may seem to create an implied, if not an express, bar to the exercise of jurisdiction by the Collector as a civil or a revenue Court. It may, therefore, appear doubtful whether it had at all been necessary for the Legislature to insert Section 14-A in the Act. Shri Dewan argues that this section was inserted in the Act by way of abundant caution and that even if it was felt that there was no real threat posed by the Supreme Court ruling in the case of Northern India Caterers

Private Ltd. and Another Vs. State of Punjab and Another, to the vires of Section 6 of the Act, a pre-constitution measure, the section inserted by the ordinance would have had the effect of keeping down the number of Civil Writ Petitions which might otherwise have been filed by the leaseholders against whom orders of eviction had recently been passed under S. 6 of the Act. The position of law is not always clear to the man in the street and a concrete bar that faces them can avert a good deal of unnecessary litigation.

19. Shri Puri then argued that Section 6 gave the Collector unbridled or unfettered powers to determine the lease at any time that he liked. The rules of natural justice apply to the proceedings under the Act and no lease could be determined u/s 6 without giving the lease-holder an opportunity of being heard. Section 14 then provides remedies of appeal and revision etc. and sub-sections (3) and (4) of this section also make it incumbent on the Commissioner and the Financial Commissioner to dispose of these appeals and revisions etc. after giving the parties a reasonable opportunity of being heard. The terms and conditions of the lease are generally reduced into writing in a prescribed form and a sample thereof is Exhibit R/1 in Shanti Parkash's case, Civil Writ No. 1430 of 1970. Clause 16 provides for another mode of settlement of disputes between the Collector and the lessee. It cannot, therefore, be said that no restraints have been placed over the exercise of his powers by the Collector or that he could at his whim or sweet will determine a lease in a capricious or arbitrary manner. No provision of this pre-Constitution Act has, therefore, been shown to suffer from any legal or constitutional defect.

20. While taking of the remedies of appeal, revision or arbitration, we may as well deal with the contention of Shri Dewan that the petitioners could not invoke the writ jurisdiction of this Court under Art. 226 of the Constitution of India unless and until all these statutory remedies had been resorted to and exhausted by them. In Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, , the Hon''ble Judges of the Supreme Court were pleased to observe as follows:-

When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. "

It was, however, observed that the rule about the exhaustion of statutory remedies was a self-imposed limitation imposed as a matter of policy and discretion rather than a rule of law and that the Courts could interfere in certain exceptional cases. The two well recognised exceptions to the doctrine of exhaustion of statutory remedies were firstly that a tribunal had exercised

special powers under a provision of statute which was ultra vires and secondly that there had been a violation of the principles of natural justice. I have, however, found that no lack of vires or unconstitutionality of any part of the Act, which is a pre-Constitution piece of legislation, has been established and there is nothing to suggest that principles of natural justice have been violated in the present case. Most of the objection raised by the petitioners could have been urged in appeal or revision before respondents Nos. 1 and 2 and I have no reason to believe that a reasonable view would not have been taken.

It has been argued by Sarvshri Puri and Mittal that the alleged breaches of the terms and conditions of the lease were so venial or flimsy, even if they had at all existed, that there was no justification for this sudden and premature termination of the leases when almost the entire period of the leases had run out. All these pleas are generally taken into consideration by the Commissioner or the Financial Commissioner and appellate or revisional jurisdiction is exercised to grant relief to the tenants in hard cases. In *Wadhawa Singh etc. v. The State of Haryana* (1970) 49 Lah 43, the Financial Commissioner Haryana had accepted such pleas of the tenant and had set aside the order of eviction passed by the Collector. It has been observed that the policy of the Government was to help the tillers of soil to the maximum possible extent in retaining the tenancy and that where the recovery of arrears of rent from the lessees was to be effected, the purpose could be achieved better by resort to Section 10 of the Act instead of ejecting the tenant. This was especially so as such lapses on the part of the tenants had been invariably condoned by the Government. A few months back, a large number of similar writ petitions against the order of eviction passed by the Collector u/s 6 of the Act came up before a Full Bench of which I was a member. All these writ petitions were withdrawn as having become infructuous because the Financial Commissioner had in the meanwhile accepted the revision petitions of the lease-holders. All these cases show that the petitioners had every hope of securing the necessary relief if they had adopted the statutory remedies that were available to them. In our case, the lease-holders have rushed to this Court with petitions under Arts. 226 and 227 of the Constitution of India without availing of the statutory remedies permitted to them u/s 14 of the Act. The premature termination of the leases when they would accelerate the eviction of the lessees by only a small fraction of the stipulated periods of leases had coincided with the decision of some controversial political issues but the allegations of mala fides or discrimination on grounds of caste, creed, language or religion may not appear to be based on any material made available on the records of these cases.

21. There is then the objection of the petitioners that the Collector has been made a judge in his own cause and that he was both the prosecutor and the presiding officer of the special tribunal. In this connection, reference may be made to the decision of the Full Bench of this Court in the case of *The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another*, . Even though the decision has been upset by the Supreme Court on some other grounds, the

observations of the Full Bench with regard to this plea may seem to hold good to the present day. In *M.L. Joshi Vs. Director of Estates, Government of India, New Delhi and Another*, , another decision under the Public Premises(Eviction of Unauthorised Occupants) Act, 1958, Dua, J. , who is now on the Supreme Court, was pleased to observe that the prohibition against a person or authority being a Judge in his own cause only implied that the person or authority should not have any personal interest in the cause that he was called upon to adjudicate. This prohibition did not imply that an authority discharging official functions could not start proceedings in a matter in which he is authorised by the statute. The same view was taken by Tuli, J. in *M.S. Oberoi Vs. Union of India (UOI)*, . This authority had relied upon the Full Bench decision in *H. Wali Mohd v. Administrator Municipality AIR 1969 J&K 88 (FB)*.

22. The objection that the impugned orders were passed in routine without the Collector having applied his mind to each case has been inspired by the fact that most of the blanks in the cyclostyled forms have remained unfilled. The use of such printed or cyclostyled pro formas becomes necessary where an authority has to deal with a large number of cases in its official capacity. Blanks have to be kept in such forms so that the particulars and details of each case can be filled in separately. It may not always be necessary to fill up all the blanks in each and every case. The existence of a few unfilled blanks in a printed or cyclostyled form would not, therefore, lead necessarily to the conclusion that the authority had failed to apply its mind. This objection of the petitioners' counsel is also without any substance.

23. In Civil Writ No. 1430 of 1970 petitioners Nos. 2 to 5 had not been personally served with notices but petitioner No. 1 had actually appeared before the Collector and had made a statement on 9-4-1970 (Annexure R/2). A notice had been issued to all the petitioners though their names had not been given but since one the co-lessees jointly interested in the lease had appeared before the Collector and had defended the case on behalf of all, no prejudice may appear to have been caused to the other co-lessees. Where a few out of a large number of persons jointly interested in a dispute in which they have a common cause to make have appeared the personal service of notices on the others need not be insisted upon. The petitioners may themselves appear to have accepted this proposition by their conduct. Civil Writ No. 1410 of 1970 relates to a lease which had originally be granted in favour of Shanti Parkash, petitioner No. 1 in Civil Writ No. 1410 of 1970 relates to that lease. Shanti Parkash, the original lessee has not cared to join as a petitioner. The widow and children of Hukam Singh have filed that Civil Writ No. 1473 of 1970, notices had been sent to the petitioners alleging that they had sublet the land and had sown commercial crops other than food or fodder and that they should show cause on 30-4-1970 why the lease in their favour should not be cancelled. The Patwari's report on the back of this notice (Exhibit R/1 to Civil Writ No. 1473 of 1970) is to the effect that the lessee had refused to accept service and that a proclamation had been made in the abadi and the adjoining areas and that a copy of the notice had

been pasted on the chopal. These lessees had lost no time in filing the writ petition after the passing of the ex parte orders of termination of their leases and it may, therefore, appear that the objection about the non-service of the notice on some of the petitioners is without any substance.

24. That last submission made by Shri Puri was that according to the definition given in Clause (b) of Section

"Collector " means the Collector of the district where the land is situated and that the impugned orders were passed by respondent No. 2 who is not the Collector of Karnal District in which the land is situated. The impugned orders are, therefore, described to be without jurisdiction and as such void. Section 12 of the Act authorises the Collector to delegate all or any of his powers and functions under the Act to any officer of the Revenue and Rehabilitation Department in his District either by Department in his District either by name or designation. Annexure R/3 is the copy of an order passed by the Collector, Karnal, making such a delegation of authority to all Sub-Divisional Officers (C) in Karnal District. It is conceded that all Sub-Divisional Officers(C) in Karnal District. It is conceded that all Sub-Divisional Officers are Revenue Officers but the argument is that the letters "C" and brackets indicate that these officers had been invested with powers of the Collector in their civil capacity. The fallacy in the argument is self-evident and the letters "C" and brackets may appear to be a clerical slip in drafting of the notification which has not misled any of the parties and has not caused any mis-carriage of justice. The petitioner has himself described respondent No. 2 as the Collector. The impugned orders do not, therefore, suffer from any want of jurisdiction. All that is necessary is that the person invested with these delegated powers of the Collector should be a revenue officer but is not necessary that the notification should say so. It can be shown by independent evidence that the person invested was in fact a revenue officer, even if the notification is silent on that point.

25. The order of eviction passed against the petitioners have been challenged mainly on the score of the vires of Section 6 of the Act under which these orders were passed. Most of the rulings cited before me relate, however, to post-Constitution Acts or the provisions thereof. The Act under consideration in the present case is, however, a pre-Constitution piece of legislation and the distinction between the two types of cases has been so well brought out in the Single Bench decision of the Delhi High Court in Dr. Bawa R. Singh's case 1970 72 LR 261 relied upon by the counsel for the petitioners. This distinction is based on certain portions of the rulings of the Supreme Court in the cases of Deep Chand Vs. The State of Uttar Pradesh and Others, and Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, which have been reproduced earlier in this judgment. If we go by the ration or the principles of law laid down in these rulings and do not merely go by the result that followed in any particular cases, these rulings may seem to against the petitioners. A still born Act may be past redemption but that would not necessarily be true in respect of a creation that

was pulsating with life at the time of its coming into being. Any ills or vices in such a live creation could be cured by proper treatment. The insertion of Section 14-A may appear to be a part of the treatment that cures Section 6 of the Act even if it ever suffered from any ills or vices.

26. I, therefore, dismiss all these Civil Writ petitions but as complicated questions of law were involved, I make no order as to costs.

27. Petitions dismissed.