(28) No other contention was advanced. I have already dealt with the contentions that were pressed in this petition.

(29) For the reasons recorded above, this petition fails and is dismissed; but there will be no order as to costs.

30. PREM CHAND PANDIT, J.—I agree with my learned brother that this petition be dismissed, but with no order as to costs.

R.N.M.

REVISIONAL CIVIL

Before Shamsher Bahadur and R. S. Narula, JJ.

SAWRAJ PAL,— *Petitioner*

versus

JANAK RAJ,—*Respondent.*

Civil Revision No. 344 of 1968

May 22, 1968

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Transfer of Property Act (IV of 1882)—S. 106—Contractual monthly tenancy in Punjab—Termination of—Fifteen days notice—Whether necessary—Such notice—Whether to be Co-terminus with the end of month of tenancy—Expression "whether before or after the termination of the tenancy" as used in section 13(1)—Whether enlarges the scope of section 13(2).

Held, that there is no express statutory provision abrogating the requirement of the service of a notice under section 106 of the Transfer of Property Act and the mere fact that the rights of a landlord for eviction are restricted or a special machinery for enforcing them is provided in a Rent Restriction Act does not absolve a landlord from the obligation of serving the requisite notice and does not take away from the tenant a perfect defence of his not being liable to ejectment without the service of such a notice. The requirement of service of at least fifteen days' notice contained in section 106 of the Act, is based on principles of justice equity and good conscience. A notice of termination of the contractual monthly tenancy, therefore, is necessary in the Punjab, even though the provisions of section 106 of the Transfer of Property Act are not applicable there. However, technical rule of procedure contained in the second

part of the provision making it necessary for the fifteen days' notice to terminate with the end of the month of tenancy cannot be invoked on principles of equity and good conscience. The period of such a notice, therefore, may not be co-terminius with the end of month of tenancy. (Paras 8, 9 and 14)

Held, that the presence of the expression "before the termination of the tenancy" in sub-section (1) does not enlarge the scope of the field covered by sub-section (2) by falling in which all that happens is that the bar contained in sub-section (1) ceases to have effect. If in addition to the bar in sub-section (1) of section 13, there is any other legal impediment against the ejectment of the tenant, nothing contained in sub-section (2) appears to affect the same. The effect of the word 'before' in relation to the termination of the tenancy in sub-section (1) is that even in a case where there is an express agreement by a tenant of his being liable to ejectment without the formal termination of his tenancy by a notice of eviction, he would still not be liable to ejectment unless his case falls within the mischief of sub-section (2). The cases of eviction of a tenant before the termination of his tenancy to which reference appears to have been made in sub-section (1) of section 13 would include cases of statutory forfeiture of tenancy under the general law in which event, before the termination of the stipulated period of a tenancy, he would be liable to ejectment but for the absolute bar contained in sub-section (1) of section 13 subject to the permissive clauses enumerated in sub-section (2) of that section. It is to provide against such cases being left out of the field of protection afforded by section 13(1) that the expression "whether before or" has been added to the other relevant provision in section 13(1). (Para 16)

Petition under section 15(5) *of Rent Restriction Act for revision of the order of Shri Surinder Singh, Appellate Authority under the East Punjab Urban Rent Restriction Act (District Judge), Jullundur, dated 25th April,* 1968 *affirming that of Shri D. S. Chhina, Rent Controller, Jullundur, dated 8th November,* 1967 *ordering the ajectment of the tenant from the premises in dispute.*

H. S. Wasu, Senior Advocate with B. S. Wasu, Advocate, for the Petitioner.

Respondent in Person.

JUDGMENT

Narula, J.—This petition for revision of the order of Shri Surinder Singh, Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949—hereinafter called the Act—District Judge, Jullundur), upholding the order of Shri D. S. Chhina, Rent Controller, Jullundur, dated November 8, 1967, directing the eviction of Swaraj Pal, petitioner under section 13(2) (i) of the Act was admitted to a Division Bench by the order of my Lord the Chief Justice,

dated April 29, 1968, and was directed to be set down for hearing as the first case on May 6, 1968, as Janak Raj, respondent, accepted service of notice of the petitioner at the Motion stage and execution of the order for eviction was stayed till the date of hearing of the revision petition.

(2) In order to appreciate all the points that have been urged before us, it appears to be necessary to survey the somewhat lengthy history of this case leading to the filing of this revision petition, though the ultimate points involved in the case do not appear to be at all complicated. The dispute relates to a portion of property No. E.Q. 253, Jullundur City, which was originally an acquired evacuee porperty and was purchased in a Government sale by one Gurdial Singh for Rs. 25,000. In execution of an *ex-parte* decree for Rs. 500 against Gurdial Singh, the property was put to auction and was purchased by Janak Raj respondent for Rs. 5,100. The *ex-parte* decree against Gurdial Singh was later set aside and ultimtely the suit in which the decree had originally been pased was dismissed, Gurdial Singh's application for setting aside the sale in favour of the respondent was rejected by the trial Court and even his first appeal against that order failed. Gurdial Singh's plea was, however, successful in his regular second appeal filed in this Court and even a Letters Patent Appeal preferred against that judgment by Janak Raj was dismissed. This led Janak Raj to prefer a further appeal to the Supreme Court which succeeded. The Judgment of their Lordships in reported in *Janak Raj* v. *Gurdial Singh* (1). We are not concerned with the merits of the controversy involved in the litigation up to the stage hereinbefore mentioned, but the same is relevant only for two purposes, viz., (i) that the pendency of the said litigation is stated to be the reason for the petitioner not having paid arrears of rent to Janak Raj as the petitioner was being pressed for payment of the same even by Gurdial Singh, and (ii) that when Janak Raj took out warrant of possession of the property, the tenant gave in writing understanding to pay rent to Janak Raj and Sawaraj Pal was thereupon allowed to continue as tenant of Janak Raj in the property. Just for the sake of completing the full history of the case, it may be added that in pursuance of certain observations made in the judgment of their Lordships of the Supreme Court, Gurdial

(1) A.I.R. 1967 S.C. 608.

Singh filed an application under section 144 of the Code of Civil Procedure for restoration of the property in dispute to him, which application was rejected by the trial Court, his first appeal failed in the District Court, and now his Execution Second Appeal No. 546 of 1968 is still pending in this Court.

(3) The respondent, to whom I will hereinafter refer as the landlord, gave a notice, of which no copy has been produced to Swaraj Pal, whom I will hereinafter call the tenant, which was received by the tenant on December 20, 1963, by registered post,—*vide* postal acknowledgement exhibit A. 1, in the absence of any copy of the notice, it is impossible to say anything about its contents. The fact remains that on March 21, 1967, the landlord filed an application for the ejectment of the tenant under section 13 (2) (i) of the Act. The Rent Controller issued notice of the application returnable for April 12, 1967. When the said notice along with a copy of the application for eviction was tendered to the tenant on 31st March, 1967, he raised some ill-advised frivolous objection about the spelling of his name in the notice, as a result of which the process-server returned the notice to the Controller. The Rent Controller considered this to be sufficient service of the tenant and without recording any evidence at all, proceeded to pass on April 12, 1967, an *ex-parte* order of ejectment in favour of the landlord against the tenant. Two days later, i.e., on April 14, 1967, the tenant made an application to set aside the *ex-parte* order. The learned Rent Controller directed notice of the application being issued to the landlord for May 2, 1967. On the same day, Mr. Chuni Lal, advocate for the landlord, appeared before the Rent Controller and appears to have pointed out to him the fatal defect in the order for eviction having been passed without it being supported by any evidence. Thereupon the Rent Controller recorded the presence of Mr. Chuni Lal, advocate and proceeded *suo motu* to set aside his *ex-parte* order, dated April 12, 1967, for the eviction of the tenant and adjourned the main case for eviction to May 2, 1967. No notice of the proceedings fixed for May 2, 1967, was given to the landlord as he was represented at that time by his counsel. Nor was any notice admittedly given to the tenant, as the order for proceeding *ex-parte* against him passed on April 12, 1967, stood intact and it was only the final order of ejectment which was set aside.

(4) On May 2, 1967, the landlord filed his written reply to the application for setting aside the *ex-parte* order and opposed the

prayer of the tenant in that behalf. The proceedings were adjourned to May 10, 1967, for the statement of the tenant and arguments on the question of the setting aside of the said *ex-parte* order. On May 10, 1967, the Rent Controller first directed the statement of the applicant (tenant) to be recorded but later passed another order (without recording the statement of the tenant) to the effect that the advocate for the landlord wanted to examine his client and that, therefore, the case stood adjourned for evidence and arguments to June 7, 1967. On the adjourned date, the parties appear to have agreed that the evidence on the application of the tenant for setting aside *ex-parte* proceedings as well as the evidence of the landlord on the plea for ejectment should be recorded at the same time. The statement of the tenant was confined to the claim in his application for setting aside the *ex-parte* proceedings. To rebut the same, the landlord examined Narain Dass process-server, who had gone to the spot and shown the notice and copy of the application for ejectment to the tenant when he had refused to accept the same. R.W. 2 Mangat Ram bailiff merely proved that is described by the learned Rent Controller as a copy of warrant of possession—exhibit R.W. 2/1—which in fact appears to be a copy of the report of the bailiff on the warrant. The said evidence was produced to prove that the tenant had admitted Janak Raj to be his landlord for the future. The landlord himself appeared as R.W. 3 and in addition to making a statement in regard to the tenant's application merely stated that the tenant had accepted him as his landlord and had given a writing to the same effect which was on the file and the same had been written in his presence and that the tenant had not paid him any rent thereafter. Of course, he proved the sale certificate in his favour. In answer to the only question asked from the landlord in cross-examination, he stated that he was prepared to accept the rent from the tenant according to law. By order, dated July 26, 1967, the application of the tenant for setting aside the *ex-parte* proceedings was dismissed but he was allowed to take part in the proceedings from the stage at which he had appeared. Tenant's appeal against

the relevant proviso which is quoted below, was July 26, and not April 12, 1967—

first date of hearing of the case, he cannot be relieved of the same." with the above observations, the tenant's revision petition against the order, dated July 26, 1967, refusing to set aside the *ex-parte* order of April 12, 1967, was dismissed with costs.

(5) It is necessary to notice at this stage as to what happened in the meantime before the Rent Controller. As soon as the order, dated July 26, 1967, refusing to set aside *ex-parte* proceedings was passed, the tenant offered to pay the entire arrears of rent for about five years, the total costs of the landlord and interest thereon to the landlord. The landlord accepted the amount on the same day under protest. Though he made several protests in his statement accepting the rent, it is by now settled that the only surviving dispute relates to the question whether the payment had been made within the time allowed by the proviso to section 13(2) (i) of the Act or not. It was expressly admitted before us by Janak Raj that the amount paid to him was otherwise fully sufficient and that in all respects other than the one of the payment not having been made on the first hearing of the case, the tenant had exonerated himself of his liability to ejectment on the solitary ground on which his eviction had been sought. It was in these circumstances that the Rent Controller passed his order, dated November 8, 1967 (from which the present petition has arisen), directing the eviction of the petitioner on the ground that the first date of hearing was April 12, 1967, and not July 26, 1967, and that the payment in question not having been made on the first date of hearing, the tenant had not absolved himself of the liability for eviction incurred under the purview of clause (i) of sub-section (2) of section 13 of the Act. In the tenant's appeal against the above-said order, two main questions were argued. The first argument advanced by the tenant about July 26, 1967, and not April 12, 1967, being the first date of hearing in the eyes of law was repelled. His argument on the second question relation to the tenant not being liable to eviction without his tenancy having been terminated by a notice under section 106 of the Transfer of Property Act was repelled on two grounds viz., (a) that the Transfer of Property Act was not applicable to the State of Punjab and (b) that this point had not been raised before the Rent Controller. The tenant's appeal having thus failed and having been dismissed by the Appellate Authority (District Judge, Jullundur), on April 25, 1968, the present revision petition was filed in this Court.

(6) At the hearing of this case before us, Mr. H. S. Wasu, learned counsel for the tenant, again pressed the point that in the circumstances of this case the first date of hearing within the meaning of

the relevant proviso which is quoted below, was July 26, and not April 12, 1967—

"13(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied—

(1) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid,

* * * * * *."

(7) The solitary argument on which this submission of Mr. Wasu was based was that "due service" in the proviso in question means not only service of notice of hearing but also service of a copy of the petition for ejectment on him. For this proposition, the learned counsel relied on the Division Bench Judgment of this Court in *Jagat Ram* v. *Shanti Sarup* (2), Though we are in full agreement with the judgment of the Division Bench in the aforesaid case, it is of no avail to the tenant in the present proceedings. It is amply proved from the evidence of Narain Dass process-server recorded on June 7, 1967, to which reference has already been made, that what was tendered to the petitioner was not only a notice of the hearing but also a copy of the petition for eviction. It has been amply proved from the statement of the process-server that the contents of the petition were got read over to the tenant and explained to him and it was only after knowing about the same that he raised

(2) I.L.R. (1965) 1 Pb. 516=1965 P.L.R. 45.

the objection of the spelling of his name not being correct in the notice. Since it has been finally held right up to the stage of disposal of the revision petition of the tenant dismissed by Gurdev Singh, J., that the notice of the case was duly served on the tenant for April 12, 1967, it appears to be impossible to hold that due service of the copy of the petition for eviction was not effected on him in the same manner and in the same circumstances as the notice of the hearing. In view of the binding decision of this Court *inter partes* to the effect that due service had been effected on the petitioner for Apil 12, 1967, and in view of the fact that copy of the petition for eviction was also tendered to the tenant along with the notice of hearing, we hold that "due service" within the meaning of clause (i) of sub-section (2) of section 13 of the Act had been effected on the tenant in this case on March 31, 1967, for April 12, 1967.

(8) The arguments on the second point were split up into two parts. It was firstly contended that the finding of the Appellate authority to the effect that no notice of ejectment is necessary in the Punjab, as the provisions of section 106 of the Transfer of Property Act are not applicable here, is contrary to law. Counsel does not appear to be unjustified in this submission. Relevant part of section 106 of the Transfer of Property Act is in the following terms—

> "In the absence of a contract or local law or usage to the contrary....., a lease of immoveable property for any other purpose (other than for agricultural or manufacturing purposes) shall be deemed to be a lease from month to month terminable on the part of either lessor or lessee by fifteen days' notice expiring with the end of a month of the tenancy.....".

(9) As already stated, it is the common case of both sides that the above-said statutory provision does not apply to the State of Punjab. The only question which calls for a decision on this aspect of the case, therefore, is whether the requirement of service of atleast fifteen day's notice contained in section 106 of the Transfer of Property Act can be said to be based on such a principle of jutsice, equity and good conscience which should be enforced by the Courts in this State. The relevant provision consists of two parts. The first relates to the necessity to terminate a monthly lease by atleast fifteen days' notice. The second is that the period of such a notice

must be co-terminus with the end of the month of tenancy. Substantially following the judgment of Bhide, J., in *Rattan Sen Sachhar* v. *Sm. Krishan Kaur and another* (3), and the very recent judgment of the Delhi High Court (S. N. Andley, J.), in *Messrs C. L. Mehra and Sons* v. *Kharak Singh* (4), I would hold that in the case of a monthly tenancy in the Punjab, in the absence of a specific contract and in the absence of any statutory provision to the contrary, a monthly tenant is entitled to atleast fifteen day's notice of eviction before any action for his ejectment can be brought in a competent Court on a Tribunal. Only the principle of justice, equity and good conscience contained in the first part of section 106 of the Transfer of Property Act applies to the Punjab; but the technical rule of procedure contained in the second part of the provision making it necessary for the fifteen days' notice to terminate with the end of the month of tenancy cannot, in my opinion, be invoked on principles of equity and good conscience. I refrain from going to the length of laying down as held by Bhide, J., that even the technical procedural part of the section is applicable on principles of equity. I, would, therefore, prefer to follow the rule laid down by Andley, J., in the caes of *Messrs C. L. Mehra and Sons* (*Supra*). In this view of the matter, we have to reverse the finding of the learned District Judge, Jullundur, to the effect that no notice of termination of the contractual monthly tenancy was necessary, merely because the provisions of section 106 of the Transfer of Property Act have not been made applicable to the State of Punjab.

(10) The second part of the argument of Mr. Wasu in relation to this question is based on a series of pronouncements by their Lordships of the Supreme Court to the effect that the relevant provisions in the various Rent Restriction Acts or Rent Control Acts are only aimed at placing further fetters on the normal contractual or statutory rights of a landlord to evict his tenants but do not even purport to take away the normal defences and other statutory safeguards against the eviction of the tenants unless in any particular statute any such right or defence is expressly taken away. The respondent, who appeared in person and argued his own case with requisite clarity, relied on the judgment of Eric Weston, C.J., in *Mst. Sunder Bai* v. *Chaudhrani Mumtaz Jan* (5), wherein it was held that the

(3) A.I.R. 1933 Lahore 134.
(4) 1968 P.L.R. (Delhi Section) 55.
(5) 1952 P.L.R. 425.

notice required by clause (a) of sub-section (1) of section 9 of the Delhi and Ajmer-Merwara Rent Control Act, 1947, is not a notice terminating the tenancy, but a notice demanding arrears of rent and that if the notice given did make a demand for payment of arrears of rent and was served in the manner provided by section 106 of the Transfer of Property Act, it was a valid notice. The learned Chief Justice further held that "where the Transfer of Property Act does not apply to the locality, technical defects in the notice to quit would not have the force they might have under the Act." The judgment of Weston, C.J., does not appear to help the landlord. In that case, the notice dated July 5, 1948, served on the tenant not only demanded the arrears of rent but also directed the tenant to deliver up the possession of the premises on August 8, 1948. An objection was taken about the period of the notice not terminating with the last day of the month of tenancy. It was this objection which was repelled by he learned Chief Justice. I have already held myself following the judgment of Andley, J., in *Messrs C. L. Mehra and Sons' case*, that the technical requirement of the notice terminating with the last day of the month of tenancy is not a principle of equity or good-conscience but a technical rule of procedure, which cannot be invoked in a locality to which the statutory provisions of the Transfer of Property Act are not applicable. Same applies to the judgment of Falshaw, J., in *Mul Raj alias Rajinder Singh* v. *Prem Chand Puri* (6), where all that was held was that the notice served on the tenant ought not to be held to be invalid and the plaintiff need not be non-suited simply because the notice did not strictly comply with the technical provisions of the relevant section of the Transfer of Property Act. The learned Judge held that a notice of ejectment served in time on the tenant in accordance with section 106 of the Transfer of Property Act cannot be held to be invalid simply on the ground that it did not strictly comply with the provisions of section 110 of the said Act by omitting to include the first day of the following month as the end of the month of the tenancy.

(11) The respondent then referred to the judgment of the Supreme Cout in *Rai Brij-Raj Krishna and another* v. *Messrs S. K. Shaw and Brothers* (7), That case arose under section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947) providing for eviction of a tenant on account of non-payment of rent. The question that arose for decision was whether the order for

(6) I.L.R. 1955 Pb. 1274=1955 P.L.R. 473.
(7) A.I.R. 1951 S.C. 115.

eviction passed by the Rent Controller under the aforesaid Bihar Act could be called in question in a Civil Court or whether the jurisdiction of the civil court under section 9 of the code was deemed to have been barred by the Bihar Act? The High Court had held that the Civil Court had jurisdiction to reopen the matter. Fazl Ali, J., who wrote the judgment of the Supreme Court, held that since section 11 of the Bihar Act began with the word "notwithstanding anything contained in any agreement or law to the contrary", any attempt to import the provisions relating to the law of transfer of property in the interpretation of this section would seem to be out of place. Their Lordships of the Supreme Court further held that section 11 of the Bihar Act was a self-contained section and it was, therefore, wholly unnecessary to go outside the said Act for determining whether a tenant was liable to be evicted or not and under what conditions he could be evicted. I think the reference to the Supreme Coutt judgment is misconcieved. The ratio of the judgment was that no other statute could be looked at for coming to a decision on any point for which provision has been made in the said Act. What was held to be beyond the jurisdiction of the civil Court was the question whether the tenant was liable to be evicted or not and the further question about the conditions on which eviction could be ordered. Those things had been specifically provided for in the Bihar Act and the application of any provision which came into conflict with the said special Act was specifically excluded by the *non obstante* clause contained in section 11 of that Act. In the present case, the tenant has not raised any question, the answer to which is contained in the Act. There is no provision in the Act abrogating the necessity of a notice required by section 106 of the Transfer of Property Act. The observations in the case of *Rai Brij Raj Krishna* cannot, therefore, help the landlord on the point in issue.

(12) The further argument of the landlord in this connection was that the Act being a complete code in itself, the ratio of the judgment of the Supreme Court in *Bhaiya Punjalal Bhagwanddin* v. *Bhagwatprasad Prabhuprasad* (8), cannot be invoked by the tenant, as the pronouncement of the Supreme Court in that case was based on the finding that the Bombay Rents Hotel and Lodging House Rates (Control) Act (57 of 1947) was not a complete code. In fact, the ratio of the judgment of the Supreme Court in the Bombay case was that application of the provisions of section 106 of the

(8) A.I.R. 1963 S.C. 120.

Transfer of Property Act is not to be deemed to have been excluded because "there is nothing in it (in section 12 of the Bombay Act) which overrides the provisions of the Transfer of Property Act". Same appears to be true of the present case. Moreover, the Supreme Court does not appear to have held anywhere so far, that merely because a Rent Act is a complete code, the necessity of serving a notice under section 106 of the Transfer of Property Act is taken away, even though there is no provision in the relevant Rent Act abrogating the requirement of the service of such a notice.

(13) On the other hand, the tenant has relied on the pronouncements of the Supreme Court contained in *Vora Abbasbhai Alimahomad* v. *Haji Gulamnabi Haji Safibhai* (9); *Mangilal* v. *Sugan Chand Rathi* (10); and *Manujendra Dutt* v. *Purnedu Prosad Roy Chowdhury and others* (11), for supporting his argument based on the following observations in the latest out of the abovesaid three authoritative pronouncement of the Supreme Court on the question in issue—

> "To summarise the position : The Thika Tenancy Act does not confer any additional rights on a landlord but on the contrary imposes certain restrictions on his right to evict a tenant under the general law or under the contract of lease. The Thika Act like other Rent Acts enacted in various States imposes certain further restrictions on the right of the landlord to evict his tenant and lays down that the status of irremovability of a tenant cannot be got rid of except on specified grounds set out in section 3. The right of the appellant, therefore, to have a notice as provided for by the proviso to clause 7 of the Lease was not in any manner affected by Section 3 of the Thika Act. The effect of the *non obstante* clause was that even where a landlord has duly terminated the contractual tenancy or is otherwise entitled to evict his tenant he would still be entitled to a decree for eviction provided that his claim for possession falls under any one or more

(9) A.I.R. 1964 S.C. 1341.

(10) A.I.R. 1965 S.C. 101.

(11) A.I.R. 1967 S.C. 1419.

of the grounds in section 3. Before, therefore, the respondents could be said to be entitled to a decree for eviction they had first to give six months' noitce as required by the proviso to clause 7 of the lease and such notice not having been admittedly given their suit for eviction could not succeed."

(14) In *Manujendra Dutt's case,* the Supreme Court held that the construction placed by the High Court on section 3 of the Calcutta Act was not correct and that the High Court was wrong in holding that the words "notwithstanding anything contained in any other law for the time being in force or in any contract" absolved the landlord from his obligation to give the notice required by section 106 of the Transfer of Property Act. A perusal of the abovesaid three judgments of the Supreme Court leaves no doubt that it has been finally settled that unless there is an express statutory provision abrogating the requirement of the service of a notice under section 106 of the Transfer of Property Act, the mere fact that the rights of a landlord for eviction are restricted or a special machinery for enforcing them is provided in a Rent Restriction Act does not absolve a landlord from the obligation of serving the requisite notice and does not take away from the tenant a perfect defence of his not being liable to ejectment without the service of such a notice. I have already held that despite the fact that the statutory provision is not applicable to the State of Punjab its principles requiring the service of atleast fifteen days notice have the force of law.

(15) The last argument of the landlord—which did appear somewhat attractive at the first sight—was that the presence of the words before or after the termination of the tenancy in sub-section (1) of section 13 of the Act amounts to an express provision abrogating section 106 of the Transfer of Property Act. Section 13(1) states—

> "13(1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended."

(16) The landlord's submission was that if the words "and whether before or" were not there in section 13(1), it could indeed be

argued that the bar to the eviction of a tenant contained in the said provision (subject to the eviction on the grounds mentioned in sub-section (2) of that section was a hurdle placed in the way of the landlord in addition to the impediment of section 106 of the Transfer of Property Act. As the sub-section stands, argued Janak Raj landlord, it specifically provides for invoking the machinery for eviction contained in sub-section (2) of that section either before or after the termination of the tenancy. On a closer examination of the argument, the fallacy in it becomes apparent. If the relevant expression had been used in sub-section (2), i.e., if the second sentence in the opening part of sub-section (2) had read—

> "If the Controller after giving the tenant a reasonable opportunity of showing cause against the eviction is satisfied that whether before or after the termination of the tenancy.....",

there would have been something in the submission made before us by the landlord. The said expression is conspicuous by its absence in sub-section (2) which contains the exceptions carved on the blanket prohibition against the eviction of a tenant contained in sub-section (1) of section 13. Sub-section (1) is in the negative form and contains an absolute bar. The presence of the expression "before the termination of the tenancy" in sub-section (1) does not enlarge the scope of the field covered by sub-section (2) by falling in which all that happens is that the bar contained in sub-section (1) ceases to have effect. If in addition to the bar in sub-section (1) of section 13, there is any other legal impediment against the ejectment of the tenant, nothing contained in sub-section (2) appears to affect the same. The effect of the word 'before' in relation to the termination of the tenancy in sub-section (1) is that even in a case where there is an express agreement by a tenant of his being liable to ejectment without the formal termination of his tenancy by a notice of eviction, he would still not be liable to ejectment unless his case falls within the mischief of sub-section (2). It appears to be appropriate to point out specifically that the requirement of service of notice under section 106 of the Transfer of Property Act is made by that provision itself subject to a contract to the contrary. The cases of eviction of a tenant before the termination of his tenancy on which reference appears obviously to have been made in sub-section (1) of section 13 would include cases of statutory forfeiture of tenancy under the general law in which event, before the termination of the stipulated period of a tenancy, he would be liable to ejectment but

for the absolute bar contained in sub-section (1) of section 13 subject to the permissive clauses enumerated in sub-section (2) of that section. It is to provide against such cases being left out of the field of protection afforded by section 13(1) that the expression "whether before or" has been added to the other relevant provision in section 13(1). There is no doubt that the expression "whether before or after the termination of the tenancy" has been construed by this Court in some cases as being equivalent to the *non obstante clause* "notwithstanding the termination of the tenancy" but the question of the exact scope, meaning, interpretation and effect of the word 'before' did not come up for consideration in any of those cases. Moreover, as already observed, it has been authoritatively held by the Supreme Court that notwithstanding the presence of the *non obstante* clause in the relevant provision in a Rent Restriction Act, the requirement of service of a notice under section 106 of the Transfer of Property Act is not abrogated by such a provision in a Rent Control Act. There is, therefore, no force at all in this submission of the landlord. Nothing else contained in the Act has been pointed out by the landlord or has otherwise been noticed by us which would take the case out of the scope of the law laid down by the Supreme Court in *Manujendra Dutt's case*. It is, therefore, held that no order for the eviction of the tenant under sub-section (2) (i) of section 13 of the Act can be passed against the tenant without proof of service on him of a proper notice envisaged by section 106 of the Transfer of Property Act in spite of the fact that the statutory provisions of that Act are not applicable to the Punjab State.

(17) Though service of notice of termination of tenancy has not been proved in this case, the landlord stated before us that if we come to the conclusion that such a notice was necessary in this case we should not dismiss his application for eviction of the tenant but should remand the case to the Rent Controller for a fresh decision after giving the parties an opportunity to prove the service or non-service of the requisite notice. To the adoption of such a course, no objection was raised by the tenant; nor could, in fact, any such objection be raised in view of the fact that the tenant had not specifically pleaded want of service of such a notice in the trial Court. In so observing, we are not oblivious of the fact that the tenant had, in fact, no opportunity to file a written statement in this case because he was permitted to join the proceedings only from the stage of evidence at which he appeared and the order for proceeding *ex-parte* against him passed on April 12, 1967, prevented him from filing his reply to

the petition for eviction. Moreover, no plea of service of notice having been taken in the petition for eviction, there could be no opportunity for the tenant to deny the service of such a notice in the proceedings at the trial stage, when, before the authoritative pronouncements of the Supreme Court on the subject, it was commonly understood that such a notice was not necessary. This cannot, however, be held, though so argued by the landlord, to amount to a waiver of the right to insist on the service of the requisite notice. He took up the defence in the first appellate court and though the learned District Judge held that there was no reason to permit the tenant to raise that point for the first time at the appellate stage, the Appellate Authority did go into the merits of the point and proceeded to adjudicate upon it. Moreover, in the course we are adopting, no prejudice would be caused to either side by this question being allowed to be raised by the tenant. It may be appropriate to mention at this stage that the landlord is also asking in this case for his pound of flesh on account of the technical default of the tenant, though the tenant was not wholly unjustified in withholding the rent when the litigation relating to the very title to the property was pending which is even at this stage not yet finally settled and when the tenant offered, even before us, to pay up to the landlord the subsequent rent up-to-date with costs and interest, if the landlord chose to accept it. We cannot, however, blame even the landlord for blatantly refusing that offer, as it is probably his legal right to adopt that course.

(18) For the foregoing reasons, we allow this petition for revision and set aside the orders of the Appellate Authority as well as of the Rent Controller directing the eviction of the tenant-petitioner and remand the case to the Rent Controller for a fresh decision after allowing the parties an opportunity to prove or disprove that atleast a fifteen days notice terminating the tenancy of the tenant and calling upon him to hand over possession of the premises to the landlord was actually served by the landlord on the tenant before filing of the petition for eviction. The decision of the Rent Controller as upheld by the Appellate Authority on the other points is upheld. In the circumstances of the case, there is no order as to costs of the proceedings in this Court.

SHAMSHER BAHADUR, J.—I agree.

R.N.M.