This provision is word for word the same as in section 12(1) (b) and 12(3) of the Madras Buildings (Lease and Rent Control) Act, XV of 1946. While interpreting this provision Rajamanner, C.J. sitting with Somasundaram, J., held in re. K. *Radhakrishnan* (2), that "when neither the appellant nor his advocate appeared to show how the Rent Controller erred and it was not shown that the decision of the Rent Controller was in any way erroneous, the appellate authority has no other course but to dismiss the appeal. The dismissal of the appeal in such circumstances is nevertheless a decision of the appeal." I am in respectful agreement with the Madras decision. The provisions of the Rajasthan Act are different from the provisions of the Punjab Act and, therefore, the Rajasthan decision will have no applicability to the Punjab Statute. That being so, this petition fails and is dismissed. There will, however, be no order as to costs.

The petitioner is granted two months' period to vacate the property provided he has carried out the order of Shamsher Bahadur, J., dated 19th November, 1965.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

SOHAN SINGH AND OTHERS,—*Petitioners*

versus

THE SUPERINTENDING ENGINEER, CANAL, AND OTHERS,—*Respondents*

Civil Writ No. 2842 of 1965

April 21, 1966

Nothern India Canal and Drainage Act (VIII of 1873)—Ss. 30 and 30A—Respective scope of—S. 20—Power of the Divisional Canal Officer under—Action for transfer of an area of a land-holder from an existing out-let to another out-let—Whether can be taken under S. 20.

(2) A.I.R. 1950 Mad. 443.

Sohan Singh, etc. *v.* The Superintending Engineer, Canal, etc. (Pandit, J.)

Held, that a bare reading of the provisions of section 20 of Northern India Canal and Drainage Act would show that whenever a landholder makes an application to a divisional canal officer for the supply of water from an existing water-course and it appears expedient to the said officer that such supply can be given, he shall give notice to the persons who are responsible for the maintenance of that watercourse to show cause why the said supply should not be made. The said officer will then make an enquiry whether and on what conditions the said supply should be conveyed through that watercourse. It is not mentioned in this section that the land-holder, who makes such an application, should not already be getting water from another watercourse. Even if that landholder is getting water from another existing watercourse, he can still apply under this section to the Divisional Canal Officer that he should be supplied water from another existing watercourse from which his lands can be better irrigated. It is then for that officer to decide on enquiry after giving notice to the persons responsible for the maintenance of such watercourse whether the said supply should be given to him or not and if so, on what conditions. There can be a number of watercourses, major and minor ones, fed by one outlet. Section 30 A of the Act, however, deals with a different situation. It comes into operation where there is the question of a general re-allotment of the areas served by one watercourse to another. For doing so, the Divisional Canal Officer has naturally to prepare a draft scheme as envisaged in this section. The question of preparing a draft scheme under the provisions of section 20 in the very nature of things does not arise. Hence action under section 20 of the Act can correctly be taken for the transfer of an area of a land-holder from an existing out-let to another out-let.

Petition under Articles 226/227 of the Constitution of India, praying that a writ of certiorari, mandamus, *or any other appropriate writ, order or direction be issued quashing the impugned order of the respondent.*

B. S. Dhillon and B. S. Shant, Advocates, for the Petitoners.

A. M. Suri and Puran Chand, Advocates, for the Respondents.

ORDER

Pandit, J.—This is a petition under Articles 226 and 227 of the Constitution filed by Sohan Singh and 9 others, residents of village Dhulkot, tehsil Faridkot, district Bhatinda and challenges the legality of the orders, dated 27th July, 1965; and 16th July, 1965, passed by the Superintending Engineer, Sirhind Canal Circle, Ludhiana and

the Executive Engineer, Sirhind Canal, Ferozepur Division, Ferozepore respondents Nos. 1 and 2, respectively.

According to the allegations of the petitioners, they were all landholders of village Dhulkot and their land measuring about 600 ghumaons was being irrigated from outlet No. R.D. 23678/L Dhulkot Distributary from time immemorial. Neem Chand, respondent No. 4, was a resident of village Chand Baja in tehsil Faridkot, district Bhatinda, and the boundary of this village adjoined that of the village of the petitioners. The land of respondent No. 4 was being irrigated from outlet No. R.D. 25885/L Jandwala Minor. In 1961, respondent No. 4 and some other right-holders of village Chand Baja made an application before respondent No. 1, praying that their land in village Chand Baja, which was being irrigated from outlet No. R.D. 25885/L Jandwala Minor be transferred to outlet No. R.D. 23578/L Dhulkot Distributary from which the land of the petitioners was being irrigated. This application was thoroughly investigated by the Sub-Divisional Officer, Irrigation Chanuwala, tehsil Moga, district Ferozepore, respondent No. 3 and he made a report that the request of respondent No. 4 and other right-holders should be rejected. The said report was sent to respondent No. 2 and thereafter the matter ultimately went to respondent No. 1, who accepted the recommendation of respondent No. 3. Later in June, 1965, respondent No. 1 again re-opened the case and wrote a letter to respondent No. 2 that the case of respondent No. 4, be reconsidered. At this, respondent No. 2, without affording any opportunity to the petitioners and without making any scheme and publishing the same as contemplated under the Northern India Canal and Drainage Act, 1873 (hereinafter called the Act) passed the impugned order, dated 16th July, 1965, recommending that the area of respondent No. 4 only should be transferred to outlet No. R.D. 23678/L Dhulkot Distributary. The size of this outlet was, however, not increased, thus resulting in loss of water to the petitioners and other right-holders whose land was being irrigated from the said outlet. This order was then confirmed by respondent No. 1 by means of the second impugned order, dated 27th July, 1965. Both these impugned orders were never communicated to the petitioners and it was only on 4th of October, 1965, that they came to know of them through the canal patwari who asked them to comply with them. Subsequently, the petitioners made an application for obtaining the copies of these orders and they were supplied to them on 15th of October, 1965. Thereafter, present writ petition was filed on 12th of November, 1965.

Learned counsel for the petitioners has raised two contentions before me—

(1) that section 20 of the Act, under which the impugned orders were passed, had no application to the instant case. No area of a land-holder which was being supplied water from an existing outlet could be transferred from that outlet to another one under section 20 of the Act. The proper section which applied to such a case was section 30A under which an area served by one water course could be reallotted to another one. At any rate, section 20 was a general section, while section 30A was a specific one for this purpose. Consequently action should have been taken by respondents Nos. 1 and 2 under the latter; and

(2) that the case of respondent No. 4 and some other right-holders referred to above had been finally rejected by respondent No. 1 in 1962. The aggrieved party did not file any writ petition against that order and, therefore, it became final. Respondents Nos. 1 and 2 had no jurisdiction under the law to review their previous order and re-open the case of respondent No. 4. No power of review has been given to the said officers under the provisions of the Act. Reliance for this submission was placed on Full Bench decision of this Court in *Deep Chand and another* v. *Additional Director, Consolidation of Holdings, Punjab, Jullundur and another* (1).

As regards the first contention, the relevant portions of sections 20 and 30A are as under:—

"20. Whenever application is made to a Divisional Canal Officer for a supply of water from a canal, and it appears to him expedient that such supply should be given and that it should be conveyed through some existing water-course, he shall give notice to the persons responsible for

(1) I.L.R. (1964) 1 Punj., 665=1964 P.L.R. 318.

the maintenance of such water-course to show cause, on a day not less than fourteen days from the date of such notice, why the said supply should not be so conveyed; and after making enquiry on such day, the Divisional Canal Officer shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

When such Officer determines that a supply of canal-water may be conveyed through any water-course as aforesaid, his decision shall, when confirmed or modified by the Superintending Canal Officer, be binding on the applicant and also on the persons responsible for the maintenance of the said water-course.

* * * * * * * *
* * * * * * * *

"30-A. (1) Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf, the Divisional Canal Officer may, on his own motion or on the application of a share-holder, prepare a draft scheme to provide for all or any of the matters, namely:—

(a) * 1 * * * * *

(b) reallotment of areas served by one water-course to another;

(c) * 1 * * * * *

(d) * 1 * * * * *

(2) Every scheme prepared under sub-section (1) shall amongst other matters, set out the estimated cost thereof, the alignment of the proposed water-course or re-alignment of the existing water-course, as the case may be, the site of the outlet, the particulars of the share-holders to be benefitted and other persons who may be affected thereby, and a sketch plan of the area proposed to be covered by the scheme."

A bare reading of the provisions of section 20 would show that whenever a landholder makes an application to a divisional canal officer for the supply of water from an existing water-course and it appears

expedient to the said officer that such supply can be given, he shall give notice to the persons who are responsible for the maintenance of that water-course to show cause why the said supply should not be made. The said officer will then make an enquiry whether and on what conditions the said supply should be conveyed through that water-course. It is not mentioned in this section, as alleged by the learned counsel for the petitioners, that the land-holder who makes such an application should not already be getting water from another water-course. Even if that land-holder is getting water from another existing water-course, he can still apply under this section to the Divisional Canal Officer that he should be supplied water from another existing water-course from which his lands can be better irrigated. It is then for that officer to decide on enquiry after giving notice to the persons responsible for the maintenance of such water-course whether the said supply should be given to him or not and if so, on what conditions. It is needless to point out that there can be a number of water-courses, major and minor ones, fed by one outlet. Section 30A, however, deals with a different situation. It comes into operation where there is the question of a general re-allotment of the areas served by one water-course to another. For doing so, the Divisional Canal Officer has naturally to prepare a draft scheme as envisaged in this section. The question of preparing a draft scheme under the provisions of section 20 in the very nature of things does not arise. I would, therefore, hold that the authorities in the circumstances of this case had correctly taken action under section 20. There is, therefore, no force in this contention.

Coming to the second contention, the reply of the respondents in their return is that previously an application had been submitted by respondent No. 4 and some other right-holders for the transfer of their area from outlet No. R.D. 25885/L Jandwala Minor to outlet No. R.D. 23678/L, Dhulkot Distributory. A report was then made by the then Sub-Divisional Officer, Golewala, for 'dropping' the case. The case was not finally 'rejected' but only 'dropped' by respondent No. 2 in 1961 and not in 1962. The matter, according to the return, could, under the circumstances, be considered by the competent authority at any time. From the return it is quite apparent that no final decision against respondent No. 4 was made by the authorities concerned against which he could have come up in appeal to the higher authorities under the Act or file a writ petition in this Court. The question of review, therefore, did not arise, because a review

application can only be filed against a final order. Previously the matter was dropped and not pursued further. There is, thus, no merit in this contention as well.

In view of what I have said above, this petition fails and is dismissed but with no order as to costs.

K.S.K.

REVISIONAL CIVIL

Before D. Falshaw, C. J. and H. R. Khanna, J.

BAIJ NATH,—*Petitioner*

versus

FIRM MONGA LAL MURARI LAL,—*Respondent.*

Civil Revision No. 674 of 1963.

April 26, 1966

East Punjab Urban Rent Restriction Act (III of 1949)—Object and purpose of—S. 4—Fair rent—Tenant in earlier proceedings for fixation of fair rent accepting an amount as fair rent which is in excess of fair rent as determined under S. 4—Whether barred from making second application for fixation of fair rent.

Held, that the East Punjab Urban Rent Restriction Act, like other Acts on the same lines, is intended mainly for the protection of tenants and for the purpose of preventing the exploitation of tenants by landlords who want to take advantage of the apparently universal shortage of accommodation. The Act protects tenants both from ejectment and from the liability to pay excessive rents.

Held, that a tenant, cannot be allowed to accept an amount as the fair rent which is in excess of the fair rent as it would be determined under the provisions of section 4 of the Act. It is to be borne in mind that the rent is not for the tenant, but for the premises and once the fair rent is determined, it will remain the fair rent for any tenants who succeed the present incumbent. For this reason a compromise arrived at in the previous proceedings for fixation of fair rent would not bar a second application by the tenant for fixation of the fair rent, if in the earlier proceedings the fair rent was not judicially determined in accordance with the provisions of the Act.