which were noted in this form. Unless the particulars of the constituents had been supplied by the respondent, the Food Inspector could not know those and their percentage. The inability of the Food Inspector to differentiate between milk ice and ice-cream from taste will not help the respondent when he himself described it as golden milk ice and gave the weight of its constituents in the whole material, which he was offering for sale. This is sufficient to hold that it was milk ice, which the respondent was selling. The learned trial Magistrate overlooked this part of the record to return a finding quoted above to acquit the respondent. This finding of the trial Magistrate being wholly unreasonable cannot be sustained and is hereby reversed and it is held that the respondent was selling milk ice.

(21) The test carried out by the Public Analyst revealed that the milk fat of the constituents of the sample was 4.16 per cent as against the maximum prescribed standard of 2 per cent and on that ground it was found to be adulterated. The sample does not conform to the definition of the milk ice and the constituents given therein. The respondent is thus guilty of an offence for selling adulterated food article.

(22) For the foregoing reasons, the order under appeal acquitting the respondent is set aside and Bhagwan Dass respondent is convicted of the offence under section 16(1)(a)(i) of the Act read with section 7. He is sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000. In default of payment of fine he shall further undergo rigorous imprisonment for two months.

S. S. Sandhawalia, C. J.—I agree.

S. P. Goyal,, J.—I also agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., Harbans Lal and S. S. Kang, JJ.

GURMEJ SINGH and others,—*Petitioners*,

versus

FINANCIAL COMMISSIONER and others,—*Respondents*.

Civil Writ Petition No. 85 *of* 1973.

September 17, 1980.

Punjab Security of Land Tenures Act (*X of* 1953)—*Section* 14-*A* (*ii*)—*Punjab Security of Land Tenures Rules* 1956—*Rule* 22 (2)—*Application by a landlord for recovery of rent—Statutory notice in*

form 'N' issued to the tenant—Tenant not depositing arrears of rent within the prescribed period of one month but filing objections challenging his liability—Objections rejected and tenant found liable—Assistant Collector—Whether has jurisdiction to give another opportunity to the tenant to deposit arrears—Non deposit of arrears within the prescribed time—Whether renders the tenant liable to ejectment—Assistant Collector or any other higher authority—Whether has jurisdiction to extend time for deposit of arrears—Time barred arrears of rent—Whether could be said to be rent due.

Held, that where the Legislature intends to give some benefit to the tenant in the matter of payment of arrears of rent the same is specifically provided and it is not permissible to the Courts to travel beyond its limits. Under section 14-A(ii) of the Punjab Security of Land Tenures Act, 1953 inspite of default of the tenant to pay the arrears of rent one month's time is intended to be given by the statute to the tenant to pay or deposit the arrears and thereby save himself from the attempt of the landlord to eject him. However, the tenant under the garb of this opportunity cannot be allowed to misuse this benefit by purporting to raise contentions regarding non-existence of the relationship of landlord and tenant, non-liability of the arrears in whole or in part or even the alleged payment of arrears, though the same may be found to be unfounded and baseless by the Assistant Collector on inquiry. Under colour of these unfounded contentions, the tenant cannot take two advantages, one to prolong the proceedings for ejectment and thereafter when the objection regarding the contentions raised by him are negatived, to get another opportunity to pay or deposit the arrears. The tenant at the time of putting his reply to the notice of demand is aware of the reality. If to his knowledge he is on firm footing regarding his non-liability of arrears of rent, he has full opportunity to prove his case. If the Assistant Collector upholds his contentions, no order of ejectment can be passed. If he has raised false contentions and all of them are repelled whether by the Assistant Collector or by the higher authorities in appeal or revision, but he has not complied with the notice in Form 'N' and not paid the arrears of rent in time as specified, he has himself to blame. The statute in fact while prescribing the period of one month in Form 'N' unambiguously tells the tenant that he can make the payment within one month of the notice or he will have to face ejectment if he is found to be in fact liable to pay the arrears of rent. He has to make the choice at the time of putting his reply to the notice. The effect of the combined reading of section 14-A(ii) of the Act, Rule 22 and Form 'N' prescribed therein is that the period of one month as prescribed in the said notice of demand as issued by Assistant Collector II Grade, during which the arrears of rent can be paid by the tenant is statutory and no jurisdiction is vested in the Assistant Collector before whom application for demand is made in the first instance, the appellate authority or the Revising Authority, as the case may be, to extend this statutory period under any

circumstances whether objection raised by the tenant in reply to the demand notice relates to the non-liability to pay arrears in whole or in part. (Paras 18 and 27).

Balwant Singh vs. *Sodhi Lal Singh and others* 1966 *P.L.R.* 380.

Sham Kaur vs. *Financial Commissioner, Punjab & others* Revenue Law Report 25

OVERRULED.

Held, that legally any rent which is not paid remains due and as such in arrears though the limitation for its recovery through suit or other proceedings in a Court of law may have expired. Remedy to recover the debt, rent or other dues through a Court of law having been lost by lapse of time as prescribed does not *ipso facto* result in loss of right relating thereto and therefore time barred arrears of rent could be construed as rent due. (Para 21).

Writ Petition under Articles 226/227 of the Constitution of India, praying that :—

(*i*) *that this Hon'ble Court may be pleased to issue a writ of certiorari calling for the relevant records pertaining to the case and after perusing the same, this Hon'ble Court may be pleased to quash the impugned orders (Annexures A.C.E., and H).*

(*ii*) *that this Hon'ble Court may be pleased to issue such other appropriate writ, direction or order as it may deem fit under the circumstances of the case; and*

(*iii*) *that the costs of the writ petition may be awarded to the petitioner.*

Case referred by Hon'ble Mr. Justice Harbans Lal on 25th April, 1980 to a Larger Bench, as there was conflict of opinion regarding the scope and ambit of section 14-A (ii) of the Punjab Security of Land Tenures Act, 1953, between the decisions of two Division Benches of this Court in Smt. Sham Kaur *v.* Financial Commissioner, Revenue, Punjab and others, 1974 *Revenue Law Reporter* 25, *and* Balwant Singh *v.* Sodhi Lal Singh and others, 1966, *P.L.R.* 380. *The larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, the Hon'ble Mr. Justice Harbans Lal, the Hon'ble Justice S. S. Kang, finally decided the case on merits on 17th September,* 1980.

H. L. Sarin, M. L. Sarin & R. L. Sarin, Advocates, *for the Petitioners.*

Puran Chand, Advocate with P. K. Aggarwal & Miss Nirmal Aggarwal, Advocates, *for the Respondents.*

JUDGMENT

Harbans Lal, J.—

(1) This writ petition was heard by me in the first instance on April 25, 1980. After hearing the arguments on both sides, I came to the conclusion that there was an apparent conflict of opinion regarding the scope and ambit of Section 14-A (ii) of the Punjab Security of Land Tenures Act, 1953 (hereinafter to be called the Act) between two Division Benches of this Court in *Smt. Sham Kaur* v. *Financial Commissioner, Revenue, Punjab and others* (1), and *Balwant Singh* v. *Sodhi Lal Singh and others* (2), and keeping in view the importance of the question of law involved, reference to a Full Bench was necessitated. It is in this background that the writ petition has been heard by the Full Bench.

(2) For proper appreciation of the different contentions raised on both sides and the important legal questions involved, brief reference to the facts of the case is necessary. Some land of Bahadur Singh, petitioner No. 4, was declared surplus under the provisions of the Act which was transferred by him in favour of his two sons and his wife, petitioners Nos. 1 to 3, by means of a gift deed, dated May 29, 1955. This gift was ignored and the surplus land was allotted to respondents Nos. 3 to 5 in different parcels under Section 10-A of the Act as tenants, who entered into possession on September 29, 1964. The petitioners as land-lords filed an application before the Assistant Collector IInd Grade, Revenue, under section 14-A(ii) of the Act, demanding arrears of rent for the crops from Kharif 1964 to Rabi 1968 in Form 'M'. On this notice under Form 'N' was issued to the respondents as tenants, according to which they were called upon to pay the arrears of rent within one month. The tenant-respondents filed objections in reply thereto and contended that there was no relationship of landlord and tenant between them and the petitioners No. 1 to 3. It was also contended that they had paid rent to petitioner No. 4. The Assistant Collector, by his order dated March 22, 1969 (Annexure A) allowed the objections and dismissed the application of the landlord-petitioners. This order was set aside in appeal by the Collector by his order, dated August 26, 1969 (Annexure B) and the order of ejectment was passed. The same order having been challenged by the

(1) 1974 Revenue Law Reporter 25.

(2) 1966 P.L.R. 380.

tenants before the Commissioner, the case was remanded to the Collector,—*vide* his order dated December 10, 1969 (Annexure C). However, the Collector, on remand, maintained his earlier order of eviction by his order, dated February 23, 1970 (Annexure D). This was also set aside by the Commissioner by his order, dated August 17, 1970 (Annexure E) and the case was remanded back to the Collector for fresh decision on the following two points:

(1) Whether the tenant-respondents had deposited the rent for the year 1967-68 with the Assistant Collector IInd Grade? If so what was its effect keeping in view the further contention of the tenants that the rent had been paid by them to Bahadur Singh?

(2) As the rent for two harvests was barred by time no order for ejectment of the tenants could be passed.

(3) The Collector, on remand, passed the order of eviction, dated 15th February, 1971 (Annexure F.). It was held that the rent for Rabi 1965 was not time barred but it was time barred for Kharif 1964. However, for the purposes of Section 14-A(ii) of the Act, even time barred rent was due from the tenants and it was their duty to pay the same. It was further held that as the application by the landlords had been filed on May 20, 1968 rent for Rabi 1968 which was to fall due on June 15, 1968, had not become due at the time of filing of the application. From Kharif 1965 to Kharif 1967 rent to the tune of Rs. 2,429.68 had fallen due and was payable by the tenants. Regarding the contention by the tenants that the rent had been paid to Bahadur Singh petitioner, it was held that the alleged payment had not been proved. In view of these findings, the order of ejectment was passed. This time the appeal by the tenants-respondents before the Commissioner had no effect which was dismissed. The matter was still pursued further by way of revision, before the Financial Commissioner, Revenue, Punjab. The learned Financial Commissioner came to the conclusion that the tenants had deposited Rs. 194.28 in respect of one crop of 1967, that the rent for the harvest Kharif 1964 being time barred was not due and could not be treated as arrears of rent, that the rent for the Harvest year 1967-68 had been deposited by the tenants after the filing of the application under Section 14-A(ii) of the Act and that the rent for the harvest Rabi 1968 had

also fallen due. It is also significant to note at this stage that before the Collector when the case was heard after the order of remand by the Commissioner for the second time, the relationship of landlord and tenant was admitted by the tenants. The learned Financial Commissioner relied on the decision of this Court in *Ashok Kumar and others* v. *The Financial Commissioner, Revenue Punjab, Chandigarh, and another* (3) (Revenue Rulings), and held that the order of ejectment could not be passed without affording fresh opportunity to the tenants to make the payment of arrears of rent as the entire rent demanded by the landlords was not due though arrears of rent for some harvests were payable. The revision petition was thus allowed and it was held that the tenants were liable to pay rent which may be determined on the basis of the produce statements produced before the Assistant Collector, IInd Garde, for the harvest Rabi 1965 to Rabi 1968 within a month of the order.

(4) This order has been challenged in the present writ petition under Articles 226 and 227 of the Constitution of India. The legality of this order has been strenuously challenged on the ground that if in pursuance of a notice under Form 'N' as prescribed in pursuance of an application under Section 14-A(ii) of the Act by the landlord, arrears of rent are not paid by the tenants within one month from the date of the notice, the order of ejectment has to be passed by the Assistant Collector, who has no jurisdiction to give further opportunity for deposit of the arrears of rent. It has also been urged that not only the Assistant Collector, Revenue, concerned even the higher authorities in appeal or revision have no jurisdiction to extend the statutory period as prescribed for payment of arrears of rent. It is also the case of the petitioners that in case the demand of the landlord regarding the arrears of rent is objected to by the tenant as being excessive, it is the duty of the tenant to pay the part of arrears of rent which may be admitted by him to be due and it is not open to him to withhold the payment even a part of rent so admitted only on the ground of excess demand having been made by the landlord. It has also been stressed that any payment by the tenant after the expiry of the statutory period as prescribed in the notice cannot save the tenant from ejectment. At this stage Section 14-A(ii) of the Act is reproduced below:—

> "A land-owner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector,

(3) 1966 L.L.T. 77.

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

(5) Under Rule 22 of the Punjab Security of Land Tenures Rules, 1956 (hereinafter to be called the Rules) the application under the above provision to recover the arrears of rent is to be in Form 'N' as prescribed in sub-rule (2) of Rule 22, which is reproduced below:

"A land-owner desiring to recover the arrears of rent from a tenant, under section 14-A(ii) of the Act, shall apply to the Assistant Collector, II Grade, having jurisdiction, in Fom M and the Assistant Collector shall thereupon issue a notice to the tenant in Form N".

The notice to be issued to the tenant is to be in accordance with Form 'N', which is also reproduced below:—

"From

The Assistant Collector, II Grade,
Place/Tehsil ————————
District ————————

"To

(Name, parentage and address of tenant).

Attached is a copy of the application made by your landlord for recovery of arrears of rent due from you.

You are now required, within a month of the receipt of this notice to:—

(1) deposit the rent or the value thereof (if rent payable in kind) in this court; or

(2) give proof of having paid the rent;

(3) give proof of not being liable to pay the whole or part of this demand; or

(4) give proof of the landlord's refusal to receive the rent or give a receipt for it.

If you fail to comply with the above orders, you will be ejected summarily from the land and your landlord put in possession.'

Signed ————————

Assistant Collector, II Grade,

Place/Tehsil ————————

Date————————District ————————".

(6) From a close perusal of the various provisions of the Act, especially Sections 6 to 16, one of the objects of the legislation discernible is that the relationship between the land-owners and their tenants was intended to be put on a sounder and more reasonable basis. Except the tenancies on the land reserved by the land-owners for their personal cultivation within the permissible limit or the small landowners as defined under the Act right of the landowners to eject their tenants was restricted to only limited grounds. The continuity of the tenancies was assured under Section 8 of the Act despite the death of the landlord or the tenant. In accordance with Section 8, the tenant can be ejected only if he failed to cultivate the land under his tenancy without sufficient cause or carried on the cultivation therein in such a manner that the land was rendered unfit for the purpose for which it had been leased out or the tenancy as a whole or part thereof was sublet. The landlord was also conferred a right to eject his tenant if the tenant refused to execute a Qabuliyat or a Patta in favour of the landlord even when so ordered by the Assistant Collector on an application made by the landowner for this purpose. Besides these grounds, the landlord was also given the right to eject his tenant if the latter was proved to have default to payment of rent regularly without sufficient cause. However, before the tenant could be ejected from his tenancy, the landlord was required to follow the mandatory procedure as prescribed under Section 14-A(ii) of the Act. If the tenant was in default of payment of arrears of rent, the landlowner could make an application before the Assistant Collector, II Grade, having jurisdiction

in the matter in accordance with Form 'M' as prescribed under Rule 22. On this application, before the Assistant Collector could pass an order of ejectment, the pre-requisite to be satisfied was the service of a notice as prescribed in Form 'N' on the tenant requiring him to pay the arrears of rent within one month of the notice. Thus inspite of existing arrears of rent and the tenant having not taken proper steps to make the payment relating thereto, one opportunity was provided to the tenant to deposit or pay the arrears of rent. In case the demand of the landlord, as incorporated in the said notice, was wrong or false, wholly or partly, the tenant was given the opportunity to produce the necessary evidence to show that the payment of the alleged arrears of rent had already been made but the landlord had not executed the requisite receipt therefor or the landlord had refused to receive the payment inspite of the offer or the tender as the case may be or that the demand of the landlord was excessive. In all these contingencies after considering the evidence produced on both sides, the Assistant Collector was to adjudicate on the matter regarding the payment of arrears of rent or otherwise in a summary manner. However, if the Assistant Collector came to the conclusion that the arrears of rent had not been paid by the tenant, it was mandatory on him to pass the order of ejectment. The pre-emptory nature of the duty of the Assistant Collector in this regard is quite evident from the following portion of sub-clause (ii) of Section 14-A of the Act:

> "..... Where, after summary determination, as provided for in sub-section (2) of section 10 of the Act, the Assistant Collector finds that the tenant has not paid or deposited the rent, he shall eject the tenant summarily and put the land-owner in possession of the land concerned."

In case it was found by the Assistant Collector that the landlord had refused to accept the rent from his tenant or demands rent in excess or that a receipt in lieu of the payment of rent was not being issued by the landlord, jurisdiction was conferred on the Assistant Collector under sub-clause (iii)(a) and (b) to proceed as the case may be and to issue necessary orders to the landlord.

(7) From the above discussion, there can be no doubt that while the Legislature was anxious to protect the tenant from the arbitrary and unfettered power of the landlord to eject him, it was equally

solicitous to guarantee the landlord regular payment of rent. The tenant has no legitimacy or right to continue in possession of the tenancy without payment of rent. The landlord could not be denied his rightful due in the form of rent as fixed or prescribed under the law and also the land belonging to him. The tenant, on the other hand, can carry on possession and cultivation of the land under his tenancy without disturbance so long as he continues to pay the lawful rent to his landlord. However, in spite of the default of the tenant to pay the rent and despite the fact that the rent fell in arrears, one more opportunity was conferred on the tenant to pay or deposit the arrears of rent before an order of ejectment could be passed by the Assistant Collector. It is also significant to note that the period during which the arrears could be paid on the application of the landlord was not left to the discretion of the Assistant Collector concerned but was fixed by the statute in the notice in Form 'N' as a period of one month from date of the notice. This was done in order to make clear the rights of both the parties beyond any pale of controversy or dispute.

(8) According to the learned counsel for the respondent-tenants, even after one month's period as prescribed in the notice in Form 'N' has expired without any payment or deposit having been made by the tenant regarding the arrears of rent, it is mandatory for the Assistant Collector or at least in his discretion to give another opportunity for payment or deposit of the said arrears before the order of ejectment became effective and enforceable. The case of the learned counsel for the petitioners, on the other hand, is that despite default of the payment to deposit the arrears of rent, one more concession was given to such a tenant to make the requisite payment in the form of a notice under the statute but this concession or benefit cannot be extended by the Assistant Collector or the higher authorities in appeal or revision as none of these authorities has jurisdiction in this regard.

(9) The provision of Section 14-A (ii) has been the subject-matter of interpretation in a number of decisions in this Court since 1962. Reliance has been placed on one decision or the other on either side in support of their respective contentions. It will be of advantage to make analytical study of the same. In *Dhenna* v. *Siri Parkash* (4), the tenant did not make payment of arrears of rent in pursuance of the notice issued in Form 'N' under section 14-A (ii) of the Act. Consequently the order of ejectment was passed. This was challenged

(4) 1962 P.L.J. 96.

in appeal before the Collector. On prayer for interim injunction during the pendency of the appeal, eviction order as passed by the Assistant Collector was also stayed. The appeal was finally dismissed by the Collector and 10 days time was allowed to make the payment of the arrears of rent before the tenant could be ejected. The Commissioner in appeal by the landlord set aside the order and held that further extension of time could not be given. The same view was taken by the Financial Commissioner in revision by the tenant. On a writ petition under Article 226 of the Constitution of India by the tenant, it was held by Tek Chand, J., that the period fixed in the notice in Form 'N' issued under section 14-A (ii) for the payment of arrears of rent was statutory and cannot be extended by the Court. It was also held that section 148 of the Civil Procedure Code was not attracted and the said provision could apply only in cases where the time was fixed or prescribed in the first instance by the Court. In *Amar Nath* v. *Hans Raj* (5), in reply to the notice in Form 'N' the tenant had objected that he was not the tenant of one of the alleged landlords though the other petitioners were his landlords and that he had paid rent for two crops and the remaining crops had been damaged on account of heavy rains. It was also contended that he had offered to make the payment of rent for the two crops but the same was not accepted by the landlord. The Assistant Collector after making inquiry rejected all these contentions and directed the tenants to pay the rent as demanded by the landlord within one month. In appeal the Collector set aside this order and held that the Assistant Collector had no jurisdiction to extend the period specified in the statutory notice. This order was maintained both by the Commissioner and the Financial Commissioner in appeal and revision. In these circumstances, it was held by S. B. Capoor, J., in the writ petition as under:—

> "However, the terms of the status seem to be mandatory and do not provide that after the summary determination some further time is to be allowed to the tenant to make the deposit of the rent. If the tenant does not care to make the deposit but puts forward pleas which are found to be frivolous, he undertakes the risk of summary eviction. On this view of the matter the impugned order cannot be said to be without jurisdiction."

(5) 1966 P.L.J. 1.

(10) In *Atma Singh and another* v. *The Financial Commissioner and others* (6), Grover, J., in somewhat similar circumstances, following the ratio of the decision in *Dhanna's* case (supra), held that the Court of appeal or revision has no jurisdiction to extend the time for payment of arrears of rent. In *Balwant Singh* v. *Sodhi Lal Singh and others* (supra), controversy under this very provision cropped up in somewhat different circumstances. Therein, the landlord had demanded a sum of Rs. 900 as rent from his tenant and a notice of demand in form 'N' was issued to the tenant. In reply, the contention on behalf of the tenant, was that only Rs. 605 was due. This contention was upheld by the Assistant Collector Second Grade, who held that this amount was tendered by the tenant to the landlord before the direction was issued by the Assistant Collector to accept the same. As the amount was not accepted by the landlord, the tenant deposited the same two days after in the treasury, the intervening two days being holidays. It was in these circumstances that it was held by the Division Bench that in case the demand of the landlord as embodied in the notice was excessive but even the part of the rent as admitted by the tenant was not deposited within the time fixed in the notice, it was not obligatory on the tenant to comply with the notice even with regard to the rent so admitted and that the Assistant Collector had the jurisdiction to provide an opportunity to make the payment. In view of this finding while deciding the application of the landlord, it was held as under:—

> "The words in section 14-A (ii) "or give proof that he is not liable to pay the whole or part of the rent" and the similar words as appear in (3) in the demand notice, clearly mean that where the amount demanded by the landlord is in excess of the amount due, there is no obligation on the tenant to pay the amount which he admits to be due before the matter has been determined by the Assistant Collector, and in this case, after the matter was decided by the Assistant Collector in favour of the tenant and the amount to be due had been tendered in Court and not accepted by the landlord the amount was deposited in the treasury on the next day on which it was open after the date of the determination of the amount due."

(11) The ratio of this decision was followed by Pandit, J. in *Ashok Kumar and others* v. *The Financial Commissioner Revenue, Punjab, Chandigarh and another* (supra).

(6) 1964 P.L.J. 67.

(12) The correctness of the above interpretation of section 14-A (ii) has been challenged by the learned counsel for the petitioners. In my considered opinion in section 14-A(ii), the Assistant Collector has been given only the power to make inquiry into the objection which may be raised by the tenant with regard to the non-liability to pay the arrears of rent whether wholly or partly but he has no jurisdiction to grant any further time if the tenant's contention is not upheld. If the tenant admits part of the liability, it is his duty to make payment of the same within the time specified in the notice and challenge the excess part of the demand. Consequently, the view of the Division Bench in *Balwant Singh's case* (supra) as well as *Ashok Kumar & others* (supra), wherein the said Division Bench was followed, to this extent, has to be set aside.

(13) In *Smt. Sham Kaur* v. *Financial Commissioner Revenue, Punjab and others* (supra), in reply to the notice in Form 'N' arrears of rent as demanded by the landlord were denied and the case of the tenant was that they were not liable to pay any rent. The Assistant Collector after hearing both the sides came to the conclusion that Rs. 1164.22 P. were due from one tenant and Rs. 3019.71 P. from another tenant. The Assistant Collector on this decision gave a specified time to deposit the arrears so adjudicated upon. On the failure of the tenants to deposit the same, the order of eviction was passed which was challenged by the tenants in further appeal. Therein interim stay order regarding eviction was passed. As the arrears of rent even after the order of the Assistant Collector were not deposited the order of eviction was passed against the tenants. The legality of this order was challenged in a writ petition under Article 226 of the Constitution of India on the ground that the eviction proceedings having been stayed by the appellate as well as the revisional authorities, the period of 30 days as allowed to the tenant would run from the date of final order in revision or in appeal. The Division Bench held that the power of extension of time to pay the arrears of rent cannot be exercised by any authority in appeal or revision, but without applying their mind specifically to the question whether the time fixed in the original notice in Form 'N' could be further extended by the Assistant Collector at the time of determining the amount of rent and disposing of the application of the landlord finally, it was held as under:—

> "The period for deposit of arrears of rent mentioned in the notice in Form 'N' cannot be extended by the appellate or

revisional authority. There is no provision in the Punjab Security of Land Tenures Act which permits extension of this time. In order to save himself from eviction it is incumbent on the tenant to pay the amount within the time prescribed in the notice, or in case of dispute,as to the arrears of rent, from the date of the order of the Assistant Collector fixing the amount of arrears of rent. In either event, it is the Assistant Collector whose action starts the statutory period of limitation for deposit or the extended period of limitation for deposit. But in appeal or revision, that power cannot be exercised."

(14) From the above ratio, it is sought to be interpreted on behalf of the tenants that though time given in the notice cannot be extended by the appellate or the revising authority, the same can be and ought to be extended by the Assistant Collector while determining the liability of the tenant and disposing of the objections of the tenant at the time of passing of the final order.

(15) The following observation in the said case is also significant:—

"This Court has consistently taken the view that the period for deposit mentioned in the notice in Form 'N' or the one prescribed in *Thana Singh's* case cannot be extended by the appellate or the revisional authority."

(16) In the above Division Bench judgment, it was also held that the provisions of this Act are analogous to those of the Punjab Rtnt Restriction Act in as much as if a tenant is in arrears of rent and does not pay the same at the first hearing, he has to suffer the eviction.

(17) In *Bhaiya Punjalal Bhagwanddin* v. *Deva Bhagwatprasad Prabhuprasad and others* (7), the appellant-tenant did not pay the arrears of rent from July 27, 1949 to July 5, 1954. On October 16, 1954, the landlord gave a notice to quit the premises on the ground that rent for over six months was in arrears. The appellant neither paid the arrears of rent, nor vacated the premises. As a consequence, the respondent-landlords filed a suit for ejectment under section 12 (3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The tenant-appellant though had not paid the rent in reply to the notice of the landlord, paid the arrears of rent within two months of the institution of the suit and on that ground claimed that the suit for eviction could not be decreed. Their lordships of

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

the Supreme Court repelled this contention. It was observed as under:—

> "The second contention that, the appellant's having paid the arrears of rent within 2 months of the institution of the suit, there would be no forfeiture of the tenancy has no force in view of the provisions of Section 12 of the Act. Sub-section (2) permits the landlord to institute a suit for the eviction of a tenant on the ground of non-payment of rent after the expiration of one month from the service of the notice demanding the arrears of rent, and clause (a) of sub-section (3) empowers the Court to pass a decree in case the rent had been payable by a month, there was no dispute about the amount of standard rent, the arrears of rent had been for a period of six months and the tenant had neglected to make the payment within a month of the service of the notice of demand. The tenant's paying the arrears of rent after the institution of the suit therefore, does not affect his liability to eviction and the Court's power to pass a decree for eviction. It is true that the expression used in clause (a) of sub-section (3) is "the Court may pass a decree for eviction in any such suit for recovery of possession' but this does not mean as contended for the appellant, that the Court has discretion to pass or not to pass a decree for eviction in case the other conditions mentioned in that clause are satisfied. The landlord became entitled to recover possession when the tenant failed to pay rent and this right in him is not taken away by any other provision in the Act. The Court is, therefore, bound in law to pass the decree when the requirements of sub-section (2) of section 12 are satisfied. This is also clear from a comparison of the language used in clause (a) with the language used in clause (b) of sub-section (3) which deals with a suit for eviction which does not come within clause (a) and provides that no decree for eviction shall be passed in such a suit if on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent then due and thereafter continues to pay or tender in Court regularly such rent till the suit is finally decided and also pays costs

of the suit as directed by the Court. *It is clear that where the legislature intended to give some benefit to the tenant on account of the payment of the arrears during the pendency of the suit, it made a specific provision.* In the circumstances, we are of the opinion that the Court has no discretion and has to pass a decree for eviction if the other conditions of sub-section (2) of section 12 of the Act are satisfied.

(18) From the above statement of law by the Supreme Court, it can be clearly held as settled that where the legislature intends to give some benefit to the tenant in the matter of payment of arrears of rent, the same is specifically provided and it is not permissible to the Courts to travel beyond its limits. Under section 14-A(ii) of the Act inspite of default of the tenant, to pay the arrears of rent one month's time is intended to be given by the statute to the tenant to pay or deposit the arrears and thereby save himself from the attempt of the landlord to eject him. However, the tenant under the garb of this opportunity cannot be allowed to misuse this benefit by purporting to raise contentions regarding non-existence of the relationship of landlord and tenant, non-liability of the arrears in whole or in part or even the alleged payment of arrears, though the same may be found to be unfounded and baseless by the Assistant Collector on inquiry. Under colour of these unfounded contentions, the tenant cannot take two advantages, one to prolong the proceedings for ejectment thereafter when the objections regarding the contentions raised by him are negatived, to get another opportunity to pay or deposit the arrears. The tenant at the time of putting his reply to the notice of demand is aware of the reality. If to his knowledge he is on firm footing regarding his non-liability of arrears of rent, he has full opportunity to prove his case. If the Assistant Collector upholds his contentions, no order of ejectment can be passed. If he has raised false contentions and all of them are repelled whether by the Assistant Collector or by the higher authorities in appeal or revision, but he has not complied with the notice in Form 'N' and not paid the arrears of rent in time as specified, he has himself to blame. The statute in fact while prescribing the period of one month in Form 'N' unambiguously tells the tenant that he can make the payment within one month of the notice or he will have to face ejectment if he is found to be in fact liable to pay the arrears of rent. He has to make the choice at the time of putting his reply to the notice.

(19) Under section 13 of the East Punjab Urban Rent Restriction Act also, the tenant can be ejected on the ground of non-payment of arrears of rent but therein also he has been granted one opportunity in as much as if he pays the arrears on the first hearing of the eviction application, ejectment cannot be ordered on the ground of non-payment. It has been the consistent view of this Court that if payment of rent is not made on the first hearing, the subsequent payment or the contention that the demand of the landlord was excessive cannot protect him from ejectment when the part of the rent is not paid on the first hearing.

(20) In *Parkash Nath Vatsa* v. *Uttam Chand Chadha* (8), H. R. Khanna, J., the celebrated and the renowned judge, who subsequently adorned the Supreme Court, held while discussing the scope of Delhi and Ajmer Rent Control Act, which is couched in similar terms as the Rent Restriction Act in Punjab, held as under:—

> "The fact that the landlord had in his notice demanded excessive amount as arrears of rent from the tenant does not absolve the tenant from paying the arears of rent which were in fact due from him. There is no justification for the tenant to remain silent and not to pay even the amount which, according to him, was due after the notice of demand had been given to him."

In *Dial Chand* v. *Mahant Kapoor Chand* (9), Mehar Singh, C.J., while declaring that proviso to clause (i) of sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, 1949, was for the benefit of the tenant, held that if the tenant wanted to take advantage of this benefit, he is required to comply with it strictly and in case a dispute as to the quantum of rent, the following three courses were open to him:

> "He can under protest make payment or tender of the arrears at the rate claimed by the landlord in the ejectment application, and if rate is found subsequently to be less, he can hope for adjustment of the excess payment. He can come forward with a straight statement of what is the true rate of rent and on that proceed to comply with the proviso, in which case he has hte benefit of the proviso, if the finding is that the rate stated by him is the rate of

(8) 1963 P.L.R. 1116.
(9) 1967 P.L.R. 248.

rent for the tenancy. Lastly, he can enter into a dispute with the landlord, as in this case, and insist upon his lower rate of rent and then take the consequence if he is not able to prove that that is the actual rent. If he fails to establish this ground, obviously he fails to have advantage of the proviso."

(21) On behalf of the tenants, the impugned order of the Financial Commissioner is sought to be supported on the additional twin grounds that it was held that the rent for the Rabi crop 1964 was time-barred and as such it could not be construed as due and in arrears and secondly that some rent had been deposited at the time an appeal by the tenants was pending before the Collector on remand. In view of these two findings, it is urged that the order of ejectment could not be passed by the Collector without giving further time to the tenant. Neither of these two contentions is of any avail. Legally any rent which is not paid remains due and as such in arrears though the limitation for its recovery through suit or other proceedings in the Court of law may have expired. Remedy to recover a debt, rent or other dues through a Court of law having been lost by lapse of time as prescribed does not *ipso facto* result in loss of right relating thereto. In *Rulia Ram* v. *S. Fateh Singh* (10), the Full Bench of this Court, while pronouncing on the scope of the arrears of rent under the Rent Restriction Act, observed as under:—

"The law of Limitation does not extinguish the arrears of rent which are beyond the period of limitation and they are all the time due from a tenant and are owing to the landlord. They are technically arrears of rent and what the proviso talks of is that in order to save himself from eviction the arrears of rent have to be deposited. The proviso does not talk of arrears of rent that are within limitation and there is no reason to give a restricted meaning to the proviso, particularly when the restricted meaning would not be in consonance with justice and equity, but on the other hand give the tenant benefit of his own default."

(22) It was also held by their Lordships of the Supreme Court in *Khadi Gram Udyog Trust* v. *Shri Ram Chandraji Virajman Mandir* (11), that the words "entire amount of rent due" in section 20(4) of the Urban Buildings (Regulation of Letting, Rent and Eviction) Act would include the rent which has become time-barred. It was further held that the Limitation Act with regard to personal actions,

(10) 1962 P.L.R. 255.

(11) A.I.R. 1978 S.C. 287.

bars the remedy without extinguishing the right. Thus the impugned order by the Financial Commissioner that the rent for Rabi crop 1964 cannot be treated as arrears of rent only on the ground that the same was time-barred cannot be sustained.

(23) Regarding the other contention that the payment of rent after the expiry of time as specified in the notice during the pendency of the eviction proceedings will also result in protecting the tenant from ejectment has also to be repelled as the same is not based on any accepted legal principle or precedent. The principle of law stands well-settled by the following ratio of the Full Bench in *Kalu Ram alias Gurcharan Das* v. *Gonda Mal* (12):

> "If once it is proved that a tenant has failed to pay the arrears on the first date of hearing, he is liable to ejectment, though he might have paid the said arrears subsequently to the landlord, which he was entitled to recover under all eventualities. It does not lie in the mouth of the tenant to say that since the payment of the arrears had been made, therefore, the ground of non-payment of rent is not available to the landlord at the time of the order of ejectment."

This is in consonance with correct interpretation of the legal principle involved as any other interpretation will be tentamount to putting premium on the uncondonable non-compliance on the part of the defaulter to make the payment within a specified time.

(24) It was submitted with a good deal of emphasis by the two learned counsel on behalf of the tenant-respondents that the decisions of this Court interpreting section 13 of the East Punjab Urban Rent Restriction Act, relating to the payment of arrears of rent on the first date of hearing, as discussed above, are not of any relevance and have no bearing while interpreting section 14-A(ii) of the Act, as the provisions under the said Acts are only not identical, but materially different in pith and substance. A close perusal of the two provisions, however, makes it evident that this contention is not sustainable. Under the Rent Restriction Act, an application for ejectment of the tenant by a landlord cannot be allowed and the order of ejectmen cannot be passed if the tenant tenders or deposits the arrears of rent on the first date of hearing after notice of the eviction application. Under section 14-A(ii) of the Act,

(12) 1980 Rent Control Journal 597.

though the application is not for ejectment as such on the ground of non-payment of arrears of rent or the produce, as the case may be, but only for getting the arrears of rent or the produce, yet on the said application notice of demand is to be served by the Assistant Collector, II Grade, on the tenant, who is required to deposit the arrears of rent within one month of the notice. In case the same is not deposited within the prescribed time and the objections of the tenant regarding non-liability to pay the arrears are set aside, the order of ejectment has to follow. Thus the only difference in the two provisions is that under the Rent Restriction Act, the tenant is given the oportunity to pay the arrears of rent on "the first date of hearing" of the ejectment application, and under the Act, the arrears of rent have to be paid within one month of the service of the notice of demand on the tenant. Under both the statutes, the authority concerned does not have the power of passing the order of ejectment if the arrears of rent are paid or deposited within the time prescribed under each of the two statutes. The legal provision is basically identical in the two statutes in spite of the difference in the language employed and the time for payment having been specified in a different manner.

(25) It is then urged that under section 14-A(ii) of the Act, the tenant has been conferred the right to raise a dispute regarding his liability to pay the whole or part of the rent as demanded by the landlord and also to adduce evidence in proof thereof. As such, it is inherent that the opportunity to pay the rent can be availed of by the tenant only when his objections have been finally disposed of and not sustained by the Assistant Collector. The tenor of the argument appears to be that the notice of demand by the Assistant Collector regarding the arrears of rent pre-supposes that the demand as made by the landlord is correct and beyond dispute. Such a stage can be reached only when all the contentions raised on behalf of the tenant have been finally settled. The apparent plausibility of the argument however, cannot bear deeper scrutiny. The language of the provisions is quite plain and unambiguous and does not admit of this far-fetched interpretation. As soon as the notice of demand is served on the tenant, he must make up his mind finally regarding his liability about the arrears of rent demanded. If he is on a firm footing that no arrears are due, he can take his chance and may not make any payment but under the garb of the right of raising a dispute, the tenant cannot delay the payment of rent which is already in arrears by prolonging the proceedings

indefinitely. After the conclusion of the inquiry by the Assistant Collector, no fresh notice of demand and the opportunity to the tenant to make payment is contemplated under the provision. If this approach is accepted, the tenant will be always too ready to put forth the plea that the demand regarding the amount of arrears of rent is excessive though the extent of excess as alleged may be a very negligible one which may also be ultimately found on scrutiny to be unsubstantiated. As an illustration, if demand of the landlord regarding the arrears of rent is for an amount of Rs. 10,000, the tenant in order to calim immuniy from making any payment whatsoever during the pendency of the inquiry may contend that the demand is excessive only by Rs. 500 or even less. Such an interpretation of the provision cannot be consistent with the scheme of the Act and the intention of the Legislature.

(26) Lastly it was emphasized that the powers of the appellate Authority or the revising Authority in appeal or in revision cannot be less than those of the Assistant Collector, II Grade, regarding extension of time to make the payment of the arrears of rent when the order of the Assistant Collector is subject to appeal or revision as the case may be. It is well settled that the proceedings in appeal or revision are continuation of the original proceedings and the power of the appellate or the revising Authority are essentially co-extensive with the powers of the original Authority if not wider in scope. Viewed from this principle of law, it has to be agreed that in case the Assistant Collector has the jurisdiction to extend the time regarding payment of the arrears of rent the appellate and the revising Authority will also be invested with the same powers. However, in view of the above discussion, there is no justification to subscribe to the view that after the expiry of the statutory period as prescribed in the notice of demand regarding the payment of arrears of rent, the Assistant Collector has any jurisdiction or power to extend the time after conclusion of the inquiry and holding that the objections raised by the tenant regarding non-liability have no substance or truth.

(27) The upshot of the above discussion is that the effect of the combined reading of section 14-A(ii) of the Act, Rule 22 and Form 'N' prescribed therein is that the period of one month as prescribed in the said notice of demand as issued by the Assistant Collector, II Grade, during which the arrears of rent can be paid by the tenant, is statutory and no jurisdiction is vested in the Assistant

Collector, II Grade, before whom the application for demand is made in the first instance, the appellate Authority, or the Revising Authority, as the case may be, to extend this statutory period under any circumstances, whether objection raised by the tenant in reply to the demand notice relates to the non-liability to pay the arrears in whole or in part. In view of this conclusion, there is no escape from holding that the decision in *Balwant Singh's case* (supra) that in case the demand of the landlord in the notice of demand was challenged by the tenant as being excessive, it was not obligatory on the tenant to make the payment of even a part of the demand about which he did not raise any dispute and that the Assistant Collector, II Grade, has to grant a fresh opportunity to make payment after the final decision regarding the objection of the tenant, was not correct and is set aside. Similarly, in the ratio of decision in *Smt. Sham Kaur's case* (supra) correct law was not laid down in holding, though indirectly, that the Assistant Collector, II Grade, had the jurisdiction to extend time for payment of arrears of rent by the tenant though the period as prescribed in the notice of demand under Form 'N' had already expired.

(28) In view of the above conclusion regarding the scope and ambit of section 14-A(ii) of the Act, it is held that the order of eviction by the Collector, dated 15th Febraury, 1971 (Annexure F) without providing any fresh opportunity to the tenant to make payment of the arrears of rent as found due did not suffer from any infirmity. In fact the tenants after having raised a number of objections at the earlier stages for a number of years admitted the relationship of landlord and tenant and also the liability to make payment of the arrears of rent as demanded by the landlord before the Collector at the time order (Annexure F) was passed. This order was validly upheld by the Commissioner, Jullundur Division, by his order, dated 28th July, 1971 (Annexure G).

(29) In this view of the matter, the order of the Financial Commissioner, dated 10th January, 1972 (Annexure H) setting aside the said order of the Collector and the Commissioner and allowing fresh opportunity to the tenant to make payment of the arrears of rent has to be set aside. It is ordered accordingly, and the writ petition is allowed in these terms. In view of the conflict of the decisions of this Court, there will be no order as to costs.

S. S. Sandhawalia, C. J.—I agree.

Sukhdev Singh Kang, J.—I also agree.

N. K. S.

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