Before Arun B. Saharya, C.J. & V.K. Bali, J

JAWAN & OTHERS—*Appellants*

versus

MEWA SINGH & OTHERS—*Respondents*

L.P.A. 1166 OF 1988

28th March, 2001

Pepsu Tenancy and Agricultural Lands Act, 1955—Chapter IV, Ss.7-A & 20—Constitution of India, 1950—Art. 226—Tenants filing application for grant of proprietary rights— Landowner conceding the claim—Application allowed—Some area of the landowner declared surplus— On appeal, Commissioner ordering redetermination of the surplus area—Landowner filing appeals against the tenants but failed—Learned Single Judge reversing findings of the Financial Commissioner on the ground that area under possession of the tenants changed—Landowner and his successors-in-interest trying all tricks to outwit the law, changing their stand and even concealing the proceedings instituted in one Court to another—Landowners forcibly evicting the tenants—Appeal deserves to be allowed— Orders of Single Judge set aside, compensatory costs of Rs. 50,000 to the tenants awarded.

Held that once the mattar came to be conceded by Bhag Singh before the prescribed Authority, wherein the appellants had made an application for grant of proprietary rights, there was no necessity for them to have proved that they were in possession of a particular piece of land continuously for the statutory period i.e. in other words, the tenant must hold the same land continuously for twelve years or more preceding 3rd December, 1953. The appellants have satisfied the requirements mentioned in Section 22. They are not liable to ejectment either under Sub-Section(1) or Sub Section (2) of Section 7-A as the case may be. They were in possession for 12 years. They are tenants under the Punjab Tenancy Act. They were in possession prior to 3rd December, 1953 They, thereby acquired the right to purchase the proprietary interest of the land held by them as a tenant. Thus, the judgment of learned Single Judge cannot be sustained. Same is set aside resulting into dismissal of writ petition and restoration of orders passed by the Assistant Collector, Commissioner and Financial Commissioner.

(Paras 37 and 43)

Further held, that a citizen in this country undoubtedly has right to vindicate his stand in any court of law, established in India, depending upon his cause and our judicial system is duty bound to look into all the grievances of the citizens aired by them. This vested right, however, cannot be permitted to be abused. Bhag Singh Landowner and his successors-in-interest tried all tricks to outwit the law and, in the process, stifled the justified cause for a period of 36 years. They changed their stand, depending upon their convenience from time to time and were undererred even in concealing the proceedings instituted in one Court to another where they shifted their stand. Their natural anxiety to save the land within the frame work of law is understandable but then in such a pursuit, if they were to go against law and base their defence all hog on false and frivolous grounds, they would certainly earn the wrath of the Court and asked to pay compensatory costs. We were thinking of burdening them with one lac rupees as costs but the fact that they, in this long drawn litigation, were able to get one order in their favour also from the learned Single Judge of this Court, where proper facts could not be projected, we reduce the costs to Rs. 50,000.

(Paras 44 & 45)

Jasbir Singh, Advocate *for the appellants*

Sarjit Singh, Sr. Advocate with Vikas Singh, Advocate.

S.C. Sibal, Addl. A.G. (Pb) with R.S. Chinna, Sr. D.A.G. (Pb), *for the respondents.*

JUDGMENT

(1) The Act to amend and consolidate law relating to tenancy of agricultural lands and to provide for certain measures of land reforms inclusive of acquisition of proprietary rights by tenants called as The Pepsu Tenancy and Agricultural Lands Act, 1955 (here-in-after referred to as the 'Act of 1955') came into being on 6th March, 1955. A tenant, who is not liable to be ejected under clauses (a) and (b) of sub-section (1) of Section 7-A or under clauses (a) and (b) of sub-section (2) of Section 7-A, was, for the first time, given right to acquire proprietary rights. Primarily, such tenants were those who were not occupying the land reserved by landowner for his personal cultivation.

(2) Appellants, who were tenants of big landowner Bhag Singh, on introduction of Act of 1955, thought that a piece of land occupied by them for number of years would now be owned by them. Luck has smiled on them and their status would change from mere tillers of land

to landowners. In their pursuit to become proprietors, they made an application on 26th August, 1963 before the Prescribed Authority. A period of nearly four decades has gone by and, as on today, far from being proprietors, they are not even in possession of land, erstwhile occupied by them as tenants, having been forcibly dispossessed. The big landowner, Bhag Singh and his successors-in-interest have webbed a net around the appellants in which they have weaved all tricks. The pleas raised by them from time to time, naturally suiting their convenience and change of their stand, it appears, created an impregnable juggernaut for the tenants. It is virtually telling the tenants that such are our devices that heads we have to win and tales you shall lose. In one of the rare cases, as the present one, the tenants have withstood the pressure by their sheer tenacity as otherwise, it appears, they are no match to the resources with which the landowners are equipped. This duel between the landowners and tenants, spanned over a period of 37 years by now reveals a shocking story, some details of which, are necessarily required to be mentioned so as to appreciate the controversy that needs adjudication in this Letters Patent Appeal filed by tenants—Jawan Khan and others, against judgment of learned Single Judge dated 3rd November, 1988 under clause X of the Letters Patent.

(3) On 26th August, 1963 tenants Jawan Khan and others (here-in-after referred to as the 'appellants') under the big landowner Bhag Singh, moved an application under Chapter IV of the Act of 1955 to acquire proprietary rights pertaining to a piece of land measuring 42 Biggas 6 Biswas under their occupation. Same was, however, dismissed in default on 19th December, 1963. An application for restoration was filed which was allowed,—*vide* order dated 6th March, 1965. Bhag Singh, big landowner himself appeared before the Prescribed Authority and conceded the claim of appellants. The Assistant Collector 1st Class (Baran Dari Garden), Patiala,—*vide* order dated 30th November, 1965, held that appellants were entitled to acquire proprietary rights of Khasra Nos. 1114(6-5), 1115 (3-3), 1116 (3-3), 1117 (6-5), 1118 (6-0), 1119 (6-0), and 1120(11-10), in all measuring 42 biggas 6 biswas as their tenancy had been subsisting since 1956. It was specifically mentioned that the respondents, who were Bhag Singh and his three sons, namely, Mewa Singh, Kuldip Singh and Mohinder Singh, had no objection if the application was allowed. The compensation for acquiring the proprietary rights was calculated @ 90 times of land revenue, i.e., Rs. 2331. The compensation was ordered to be paid in six annual instalments. First instalment of Rs. 293.75 was to be deposited within fifteen days of the date of said order. Appellants were held to be sole owners of the land, of which proprietary rights had been granted

and they were further held entitled to have sale certificate after the deposit or payment of first instalment as required under Section 23(3) of the Act of 1955.

(4) Meanwhile, it appears, Collector, Fatehgarh Sahib (Bassi), declared some area belonging to Bhag Singh as surplus under the provisions of the Act of 1955,—*vide* order dated 27th July, 1960. This order came to be challenged by Bhag Singh in Civil Writ Petition No. 1902 of 1963. It was contended by counsel representing Bhag Singh in the writ petition aforesaid that the big landowner had transferred some of his land in favour of his sons on 19th December, 1957 and same should have been excluded while determing the surplus area and that if the said transfer was not accepted, some other land of petitioner instead of the Khasra numbers, shown in the draft statement, should be shown as supplus. The Collector, on the objections, referred to above, however, held that Bhag Singh had effected transfer after 21st August, 1956 and as transferees were his sons, he could not get any benefit under Section 31-FF of the Act of 1955 as also that request of Bhag Singh was reasonable and consequently, some other khasra numbers belonging to him were declared surplus. This Court,—*vide* orders dated 18th January, 1965 held that if Bhag Singh was aggrieved of this order, he could have filed an appeal against the same under Section 31-D(3) within 30 days before the Commissioner and his further remedy was to go in revision before the Financial Commissioner under Section 39(3) but he did not avail of these remedies but filed a writ petition in this Court on 18th December, 1963, i.e, after about 3-1/4 years of passing of the impugned order. After noting arguments of learned counsel for Bhag Singh with regard to delay in filing the writ petition, the Court came to the conclusion that since no appeal or revision had been filed against the impugned order dated 27th July, 1960, the same had become final. In ultimate analysis, the writ petition was dismissed being belated. It requires to be mentioned here that while holding the petition to be belated, it was also observed by this Court that during the period Bhag Singh did not agitate the matter, rights of third parties had also intervened, to whom the surplus land had been allotted. Despite the fact that order dated 27th July, 1960, declaring land of Bhag Singh as surplus, had assumed finality, as the writ petition against same had since been dismissed by this Court. Bhag Singh, undeterred with the said result and by concealing the same, filed a revision against the aforesaid order in 1968 before the Commissioner, Patiala Division, Patiala. It was urged before the Commissioner that his holding should have been evaluated as was in Kharif, 1956, i.e., on the commencement of the Act of 1955. On the aforesaid plea of Bhag Singh, Commissioner held that Section 32-NN of the Act of 1955 was inserted by means of

Section 10 of the Punjab Act No. 16 of 1962 and was given effect from 13th October, 1956 and, therefore, the officers concerned were bound to give effect to the object of the legislature, i.e., they were bound to give retrospective effect to the Act. Revision petition filed by Bhag Singh was, thus, allowed and impugned order of Collector was set aside and a dirction to re-determine the permissible area in accordance with law, after giving notice to the tenants and transferees from Bhag Singh between 21st August, 1956 and 30th July, 1958, was given. The Collector, while re-determining the surplus area of Bhag Singh,—*vide* orders dated 8th August, 1974, Annexure A-2, held that the owner of land was in self-cultivation of 24.54 standard acres of land which was less than 30 standard acres and, therefore, no area of Bhag Singh could be declared as surplus. While coming to the aforesaid conclusion it was first observed that the landowner on 30th October, 1956 owned total area measuring 41.63 standard acres out of which area measuring 17.09 standard acres, was under possession of the tenants an reamining area measuring 24.54 standards acres was in self-cultivation of the owner. The finding aforesaid was recorded on a specific plea raised by the big landowner that some area belonging to him was under the cultivation of tenants on 30th October, 1956. Bhag Singh was able to secure an order in his favour pertaining to declaration of surplus area by specifically pleading that some area belonging to him was under the occupation of tenants and the same could not be computed as belonging to him for the purposes of declaration of surplus area. He took full advantage of the area of land belonging to him that was under the cultivation of tenants. Having succeeded in his endeavour to save his land from being declared surplus, he got around the tenants now as, despite the fact that matter with regard to proprietary rights of appellants came to be conceded by him, culminating into order dated 7th April, 1965, an appeal came to be preferred by his sons against the said order on 16th March, 1971. In these proceedings, no mention at all was made of the order passed by this Court in the writ petition, referred to above as also the orders passed by the Collector on remand by the Commissioner, details of which have been given below. This appeal was dismissed *vide* orders dated 28th November, 1973, Annexure P-2, on the ground that there could not be any appeal against a conceded order as also that the same was barred by time. Not satisfied with the order aforesaid, sons of Bhag Singh preferred a revision before the Commissioner, which too met with the same fate *vide* order dated 17th May, 1976, Annexure P-3. Still not satisfied, sons of Bhag Singh filed a second revision before the Financial Commissioner, which too met with the same fate *vide* orders dated 21st September, 1978, Annexure P-4. Orders Annexures P2 to P4 passed by the Collector, Commissioner and Financial Commissioner, were then challenged in

CWP No. 717 of 1979 which has since been allowed by learned Single Judge. As mentioned above, it is against this order that present appeal has been filed. Order aforesaid were challenged on variety of grounds, inclusive of that the finding of Assistant Collector 1st Class that the petitioners, i.e., sons of Bhag Singh and Bhag Singh, owned 38.69 standard acres of land in 1963-64 and if the petitioners were given their permissible area, they were evidently small landowners as also that according to Section 20 of the Act of 1955 read with Section 7-A, it is clear that a tenant is eligible to acquire proprietary rights only if his tenancy subsisted in 1956 and the landowner owned land in excess of 30 standard Acres and further that as per Act of 1955, petitioner owned land within their permissible limit, as would be clear from the order passed by the Collector on remand. Naturally, the fact that Bhag Singh had transferred land to petitioners was also pressed into service. It was further the case of petitioners that tenants had to continue on particular khasra numbers so as to acquire proprietary ritghts and if they were to abandon their tenancy on particular khasra numbers, they could not purchase the same.

(5) The appllants hotly contested the matter and, *inter alia,* pleaded in the written statement that their possession had been continuous since 31st October, 1956 on land measuring 42 biggas 6 biswas consisting of same parcel and numbers of land and it was by the patwari that in certain girdawaris their possession might have been shown in some years on some of the land in dispute and some other numbers. Bhag Singh, the original landowner had filed Civil Writ Petition No. 1902 of 1963 challenging the order of Collector, Fatehgarh Sahib (Bassi dated 27th July, 1960 whereby some area belonging to him was declared surplus under the provisions of the Act of 1955. The writ was decided by this Court on 18th January, 1965 and findings of Collector in his order dated 27th July, 1960 were not interfered with. It was further stated that the issue with regard to grant of some land by Bhag Singh to petitioners had assumed finality as this point was pressed by Bhag Singh in CWP No. 1902 of 1963 which came to be dismissed. Other points in pleadings in writ, as mentioned above, were also contested in the written statement.

(6) Petitioners filed replication with which they attached order passed by the Commissioner, Annexure P-5 remanding the case to Collector for determination of surplus area of Bhag Singh.

(7) This matter was here by us on an earlier occasion and when the case was at the fag end, Mr. Sarjit Singh, learned counsel representing the respondents apprised the Court that matter has since been compromised before the Civil Court. He, thus, sought adjournment

to move an appropriate application to record the compromise. Civil Misc. Nos. 760 and 761 of 2000 were filed for recording compromise between the parties. Compromise Annexure C1 has also been placed on record. While hearing the application aforesaid on 15th May, 2000, we adjourned the case for directions on 17th May, 2000 as the counsel appearing on behalf of the respondents stated that there were some documents in their possession which could also be relevant for proper disposal of the appeal. Same were ordered to be placed on record. On the adjourned dated, counsel for the respondents stated that there were no other documents. Keeping in view the facts and circumstances of the case, we recorded the following order on 17th May, 2000 :—

> "Today learned counsel appearing on behalf of the respondents states that the respondens have got no other documents. This is at variance with the statement made on 15th May, 2000.
>
> Keeping in view the peculiar facts and circumstances of the case, especially the circumstance now emerging out of the alleged compromise, sought to be enforced by the respondents, we direct the respondents to make discovery and production of all relevant documents that may be in their power or possession on oath.
>
> Suitable affidavit shall be filed within one week. Advance copy shall be given to the non-applicant—appellants. They may file reply to the application within one week thereafter.
>
> List the application for further directions on 10th July, 2000".

(8) During the course of hearing, reply to various applications and rejoinders thereof have since been filed. Before we might determine the controversy in hand, it becomes necessary to first dispose of these applications which have since been ordered to be heard along with the main case. In CM No. 761 of 2000 filed under Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure prayer of petitioners is to decide the appeal in terms of compromise dated 30th January, 1989. It has, *inter alia,* been pleaded that writ petition was allowed by learned Single Judge of this Court on 3rd November, 1988. The parties to the litigation have compromised the matter in the village and appellants have given up their claim over the land measuring 42 Biggas 6 Biswas comprised in Khasra Nos. 1114 to 1120. Petitioners Mewa Singh and others had agreed that appellants would be owners of land measuring 9 biggas comprised in Khasra Nos. 1118 (3-0) and 1119 (6-0). This was an oral compromise. Later on, however, the appellants filed a Civil Suit No. 739 dated 17th December, 1988 for possession of above

mentioned land in the court of Sub Judge 1st Class, Amloh. The compromise came to be arrived at in that suit which was dismissed on 9th February, 1989. A copy of compromise has been annexed with the application as Annexure C-1 whereas copy of order dated February, 9th 1989 has been annexed as Annxure C-2. A copy of statement of counsel for the appellants has also been annexed as Annexure C-3 whereas written application, said to have been filed by the appellants before the Sub Judge 1st Class, Amloh has been annexed as Annexure C-4. It has then been pleaded that in view of compromise, appeal is liable to be dismissed and appellants would be owners of 9 biggas of land comprised in Khasra Nos. 1118 and 1119. The compromise is stated to have been signed by both the parties and attested by witnesses. It has further been pleaded that the correctness of the compromise was admitted before the Civil Court in civil suit No. 739 dated 17th December, 1988 decided on 9th February, 1989. Application in hand came to be filed on 11th May, 2000. On a later date, i.e., on 23rd May, 2000, affidavit of Mohinder Singh son of Bhag Singh was also filed wherein it has been mentioned that when the appellants and petitioners entered into a compromise on 30th January, 1989, the parties had also entered into an agreement for exchange of land on the same date. The documents were prepared in duplicate and one set was kept by each of the parties. It is further stated that agreement of exchange was not produced on 17th May, 2000 as the petitioners were of the view that its production was not necessary to prove the compromise which could be done by production of compromise deed alone and it is in the context of these facts that it was stated that earlier petitioners did not rely on any other document. Agreement of exchange has also been annexed with the affidavit aforesaid.

(9) Prayer contained in the application with regard to alleged compromise has been seriously opposed and in the reply filed to the said application, it has been pleased by way of preliminary objections that the petitioners, because of their act and conduct, are not entitled to get any relief on the basis of alleged agreement dated 30th January, 1989. In the present case, they never tried to rely upon the said agreement when the arguments commenced in the appeal. It was only at the fag end, when the matter was going to be concluded, that mention of the said agreement was made. Thereafter, present application was filed and as such the petitioners were estopped to claim any benefit on the basis of the said agreement. It has also been mentioned that the said agreement is not enforceable because it was not a legal one as the same has been obtained by undue influence, coercion, fraud and misrepresentation. This appeal was admitted on 24th November, 1988. At

the time of its admission, this Court stayed operation of judgment of learned Single Judge and further status-quo was ordered to be maintained. Appellants were in possession of the property continuously for the last many decades but they were forcibly thrown out by the petitioners from the land in dispute with the police help. Appellants were put in such a tremendous pressure that they had to thumb mark the above said documents on the representation made by the petitioners that they should part with half of property only but now it has transpired that they had been left with only 9 Biggas of land and fraudulently another exchange deed was also prepared which shows that the land was to be given at some other place. Both these documents are result of fraud and coercion and as such not enforceable. It has further been pleaded that the agreement in question amounts to transfer of land in which the petitioners have no subsisting interest. The agreement is also bad for non-registration of same. It has also been pleaded that the agreement is not enforceable as it runs contrary to the provisions of the Act of 1955. By virtue of Section 32-KK it is provided that land owned by Hindu Undivided Family shall be deemed to be land of one land owner. In the present case, entitlement of Bhag Singh has already been looked into and the case had become final regarding his surplus area many decades ago and if the present agreement was enforced, it would amount to an increase in his total entitlement and as such the agreement can not be enforced. It has further been pleaded that the agreement was never acted upon during the last more than eleven years, which clearly shows that intention of the parties was not to act upon the same. While replying on merits, filing of civil suit by the appellants has been admitted. It has further been stated that no compromise was arrived at in the said suit. The appellants were made to thumb mark the documents by putting them under tremendous pressure and fear. The petitioners have committed fraud and have not parted with even a single inch of land till date. Insofar as moving of application in the civil suit is concerned, it is again stated that their thumb impressions were obtained on blank papers which might have been used by the petitioners for moving the said application. Reply to the affidavit of Mohinder Singh pertaining to exchange has also been filed. It has been pleaded in the reply that exchange deed is nothing but sheer fraud committed with the appellants. The appellants are illiterate and they can not even write and read and it appears that while getting agreement dated 30th January, 1989, present exchange deed was also fraudulently prepared. Had there been any intention of the appellants to exchange the land, this could have been mentioned in the original compromise also. Even otherwise, exchange deed never saw the light of day till it was produced before this Court. It has not been acted upon and the petitioners can not claim legal right out of the

said exchange deed which has been fraudulently prepared. It is denied that a copy of exchange deed was ever handed over to the appellants. The petitioners have filed rejoinder to the reply of their application filed under Order 23 Rule 3 given by the appellants, naturally reiterating the stand taken by them in the said application.

(10) Before we might delve any further on the application, referred to above, it would be worthwhile to mention some salient features of the case that may have great deal of bearing on the plea of the petitioners for recording compromise and dismissing the appeal as having become infructuous. Learned Single Judge allowed the writ petition filed by the petitioners on 3rd November, 1988 and the present appeal arising from the said judgment, came up before the Motion Bench on 24th November, 1988 when same was admitted and operation of judgment of learned Single Judge was stayed. It was further ordered that status-quo as on that day, i.e., 24th November, 1988 shall be maintained. The alleged compromise between the parties came to be recorded on 30th January, 1989. As per the pleadings made in the application No. 761 of 2000, the parties had compromised the matter in the village. This was an oral compromise. It is later on that the appellants are stated to have filed civil suit on 17th December, 1988 for possession of the aforesaid land in the court of Sub Judge 1st Class, Amloh, wherein compromise is stated to have been arrived at, resulting into dismissal of the suit on 9th February, 1989. As mentioned in the earlier part of the judgment, this matter came to be heard on an earlier occasion. Arguments in the case spanned over quite a few hearings and it is only at the fag end of the arguments that the present application came to be filed on 11th May, 2000 whereas agreement with regard to exchange of land was disclosed to this Court on 23rd May, 2000.

(11) The documents annexed with the application in hand, reveal that a suit under Section 6 of the Specific Relief Act for possession of the land on the basis of prior possession and title with regard to land measuring 42 biggas 6 Biswas came to be filed on 17th December, 1988. Surely, suit under Section 6 of the Specific Relief Act could be based upon possession and dispossession. Annexure C-4 is an application which does not bear any date and by virtue of which the appellants are stated to have made an application stating therein that they had entered into a compromise with the petitioners and that they would have no connection with the land in suit and further that the petitioners are owners in possession of the land and they do not want to continue with the suit. On this application, Annexure C-4, it appears, the mater came up before the concerned court on 9th February, 1989 wherein only statement of the counsel for the plaintiff that he would not like to

proceed with the suit because compromise had been entered, was recorded. On the same day, i.e., 9th February, 1989, the Court passed order in the said case which runs thus :—

> "Case taken up today on the application. In view of the above statement, suit is dismissed with no order as to cost having been compromised. File be consigned".

(12) It is significant to mention that the suit that came to be filed on 17th December, 1988 ended into a compromise within less than two months from the date of its institution and that too on the statement made by the counsel for the plaintiff-appellants herein. It is further significant to mention here that the written compromise, stated to have been arrived at between the parties, came into being on 30th January, 1989 and yet it was not placed on record either along with the application filed by the appellants or by any other means. In the application that is stated to have been filed by the appellants, it is mentioned that they shall have no connection with the land in suit and further that the petitioners would be owners in possession. There is not even a remote hint either in the application aforesaid or in the statement made by the counsel for the appellants, as to what were the terms of the compromise. Quite to the contrary, it appears from the application, referred to above, as if the appellants were not to have anything to do with any part of the land in suit. This compromise was not disclosed to this Court throughout during pendency of the appeal. No application ever came to be made all through the appeal remained pending for dismissing the same as having become infructuous by virtue of compromise, pleaded in the application in hand. As mentioned above, the present application was filed when arguments were about to conclude. Insofar as the agreement of exchange of land between the parties is concerned, that was disclosed to this court on still later date. By virtue of compromise aforesaid, only 9 biggas of land comprised in Khasra Nos. 1118 and 1119 was to go to the appellants whereas the remaining land measuring 33 Biggas 6 biswas was to be owned by the petitioners. By virtue of yet another agreement, i.e., exchange, even aforesaid land was to be owned by Bhag Singh and insofar as appellants were concerned, they were to get the land situated in village Bhadal Thuah. This exchange agreement also came into being on 30th January, 1989, i.e., when compromise was given effect to by order of the Sub Judge on 9th February, 1989 and yet there was no mention of same any where. Further, the fact that stares everyone on the face is that the appellants are neither in possession of land comprised in Khasra Nos. 1118 and 1119, a part of land involved in the said suit nor of 9 biggas situated in village Bhadal Thuah. All that the counsel for the petitioners, in the

aforesaid situation, states is that the petitioners are prepared to give land measuring 9 biggas situated in village Bhadal Thuah to the appellants.

(13) Having examined the salient features of the case, time is now ripe to evaluate the contentions raised by learned counsel for the parties for and against giving effect to the alleged compromise, Annexure C-1. It has been strenuously argued by Mr. Sarjit Singh, learned counsel for the petitioners that when it is proved to the satisfaction of the Court that a lis has been settled wholly or in part by any prior agreement or compromise, in writing signed by the parties or where the defendant satisfies the plaintiff in respect of whole or any part of subject matter of the suit, the Court has necessarily to order such an agreement, compromise or satisfaction to be recorded and pass orders in accordance there with and where one of the parties may deny an adjustment or satisfaction that has been arrived at, the Court has to decide the same question, as would be evident from the provisions of Order 23 Rule 3 CPC. In the present case, the parties arrived at a compromise in a suit that came to be instituted by none other than the appellants themselves and it is on their application, signed by them that the matter was taken up and the statement of the counsel representing the appellants was recorded, resulting into an order of the Court dated 9th February, 1989, by virtue of which suit under Section 6 of the Specific Relief Act was dismissed. Compromise, Annexure C-1 dated 30th January, 1989 brought on records of the case now, strengthens the proceedings culminating into order of civil Court dated 9th February, 1989, Annexure C-2, further contends the learned counsel. Mr. Jasbir Singh, learned counsel for the appellants joins issues with the counsel representing the petitioners on the pleas, referred to above.

(14) We have given our thoughts to the contentions raised by learned counsel representing the parties and examined the record. We are of the considered view that no order giving effect to compromise, Annexure C-1 can be recorded, in the facts and circumstances, as are available before this Court. For variety of reasons, that we shall give in subsequent paragraphs of this judgment, collectively and singularly, are enough to reject the compromise, Annexure A-1 outrightly. The provisions contained in Order 23 Rule 3 CPC would clearly suggest that a suit has been adjusted wholly or in part by any lawful agreement or compromise, has to be proved to the satisfaction of the Court. The proviso to Order 23 Rule 3 further clarifies that where a compromise is alleged by one party and denied by the other, the Court has to decide

the question. In the facts and circumstances of this case, we are of the view that petitioners have not proved to the satisfaction of the Court that the suit has been adjusted wholly or in part by any lawful agreement and further that compromise having been denied by the appellants, no proper and admissible evidence has been led that may result in returning a finding on existence or validity of the compromise. Reverting to the facts of this case, it may be recalled that the learned Single Judge allowed the writ petition filed on behalf of the petitioners on 3rd November 1988 whereas the compromise dealing with the land in suit, came to be recorded on 30th January, 1989 and the present appeal came to be admitted on 24th November, 1988. If compromise Annexure C-1 was genuinely arrived at between the parties, we find no reason why an application, like the one in hand, was not filed for a period of over 12 years. The matter does not rest there inasmuch as the application in hand came to be filed on 17th May, 2000 when, as mentioned above, arguments, spanned over a number of hearings, had almost concluded. At no hearing, earlier to when arguments were about to conclude, even a remote mention was made to the compromise, Annexure C-1. The matter all this while was being contested very hotly on the legal issues involved in the case. The facts stated above, leave us with no choice but for to conclude that during the course of arguments, in all probability, it appeared to the petitioners that the controversy on legal issues may stand determined against them and it is only when such a thought came to the petitioners that present application came to be filed in this Court. The act and conduct of the petitioners militates against the proof of agreement to the satisfaction of the Court. Further, as mentioned above, compromise has been sought to be proved on the strength of affidavits accompanying the application under Order 23 Rule 3. Contents of said application have been controverted in the reply filed on behalf of appellants which too is accompanied by an affidavit of one of the appellants. There is a specific plea taken in the reply that the compromise, Annexure C-1, is an outcome of coercion, misrepresentation and fraud. A compromise of the kind that has been placed on record, in the context of the facts on which the same has been opposed, necessarily requires evidence to determine its authenticity or otherwise. No request was ever made at any stage either to have the matter examined by recording evidence by this Court or by the Subordinate Judge. The essentials of recording a compromise, as spelt out from the provisions of Order 23 Rule 3 CPC, are completely lacking. That apart, sequence of events, as emanate from the facts, fully detailed above, do prima facie suggest that the compromise, Annexure C-1 is an outcome of coercion, undue influence or, may be, fraud. The compromise came to be recorded in a suit filed under Section 6 of the Specific Relief Act which could be only on the

basis of possession and dispossession pertaining to land measuring 42 biggas 6 biswas. For this piece of land, there has been long drawn litigation between the parties. It is hard to believe that the appellants, who were able to obtain stay not only of operation of judgment of learned Single Judge but also an order of status quo with regard to possession, were to ultimately agree to have only 9 biggas of land out of a chunk of land measuring 42 biggas 6 biswas. The suit, as referred to above, came to be instituted on 17th December, 1988 and ended in its dismissal in toto on 9th February, 1988. The learned Sub Judge, while ultimately disposing of the case, only mentioned that in view of the statement made by counsel for the plaintiff, the suit was dismissed, with no order as to costs, having been compromised. There is not even a remote mention of the terms of compromise nor compromise deed as such was placed on records. It is interesting to note that the counsel for the plaintiffs, i.e., appellants herein, simply stated that he would not like to proceed with the suit as compromise has been entered into. While making a statement, counsel for the plaintiffs also did not given even the essential details of compromise nor placed the same on records. It is further interesting to note that even the land which was to go to the appellants by virtue of compromise, Annexure C-1, did not actually come to them at any stage. Instead, an agreement of exchange came into being on the same very day, i.e., 30th January, 1989 when compromise, Annexure C-1 was entered into between the parties. By virtue of this exchange, different land was to go to the appellants and concededly, even the said land was never given to the appellants. As mentioned above, it is only during the course of arguments that Mr. Sarjit Singh, learned counsel for the petitioners states that possession of the land, subject matter of exchange, can be handed-over to the appellants at any time. On the facts, as stated above, it is not difficult to return a finding that the compromise, Annexure C-1 as also agreement of exchange are nothing but a made-up affair and, in all probability, an outcome of coercion, undue influence and fraud.

(15) There are other legal aspects, on the strength of which, once again, compromise, Annexure C-1 can not be accepted. The appellants had succeeded in obtaining proprietary rights of the land in question by virtue of an order passed by the concerned authority which order was confirmed in appeal and two revisions filed by the petitioners. No doubt, all these orders were set aside by the learned Single Judge, but, as mentioned above, the operation of the judgment was stayed by an interim order passed by the Letters Patent Bench while admitting the appeal to a regular hearing. The moment, operation of judgment passed by learned Single Judge was stayed, orders passed by the concerned authorities conferring the proprietary rights upon the appellants, were

revived. That being so, petitioners were no more owners of the land in dispute, having been divested of the title that erstwhile vested in them. They were, thus, not competent to enter into a compromise with regard to the land that had gone out of their hands. Further, compromise, Annexure C-1 would amount to transfer of land from the appellants to the petitioners which required compulsory registration under Section 17 of the Registration Act, 1908.

(16) For the reason mentioned above, this Court has absolutely no hesitation in rejecting the application moved by the petitioners for recording compromise under the provisions of Order 23 Rule 3 CPC.

(17) Having rejected the applications filed by the petitioners for recording compromise, focus naturally shifts to the merits of the case. Before we may, however, examine the controversy from that angle, it becomes necessary to give, in brief, the reasons that prevailed with the learned Single Judge in upsetting an order, conferring proprietary rights on the appellants and which order was an outcome of concession made by the big landowner, Bhag Singh as also orders that came into being in the appeal and revisions filed by sons of Bhag Singh against the concessional order. Appellants were denied proprietary rights primarily on two grounds. They were held not to have fulfilled the two essential pre-requisites for acquisition of proprietary rights under the Act of 1955, namely that they were in possession of the land in dispute both on the day on which the Act came into force as also on the date of the application for the acquisition of proprietary rights and further that they had been in continuous possession of such land for a period of over 12 years. For recording the finding to the effect aforesaid, learned Single Judge relied upon order of the Assistant Collector, Patiala, dated 30th November, 1965 wherein it came to be recorded that the appellants, according to Khasra Girdawari of 1956-57 were cultivating 41 bighas and 11 biswas of land while as per Khasra Girdawari of 1957-58, land under their cultivation was 63 biggas and 16 biswas and in 1958-59 it was 14 biggas and 13 biswas while in the year 1959-60, the area under their cultivation was 42 biggas and 16 biswas and finally in the Khasra Girdawaris of 1960-61 to 1962-63, 42 biggas and 6 biswas of land was under their cultivation. It was also found from findings recorded by the Financial Commissioner vide order dated 17th May, 1976 that on 30th October, 1956 appellants Jawan and Chanan Khan along with their father were tenants on land comprising Khasra Nos. 1105, 1106, 1107, 1111, 1112, 1113, 1118 and 1119 and that subsequently they appeared to have shifted to Khasra Nos. 1114 to 1120 measuring 42 biggas and 5 biswas as per Khasra girdawari for Kharif 1960-61 to Rabi 1962-63. Only two Khasra nos. 1118 and 1119 remained in their

possession as tenants when the Act of 1955 came into being as also on the date of application for acquisition of proprietary rights whereas the other area was never in their continuous possession running over a period of 12 years. Reliance was then placed on a judgment of this Court in *Jaisi Ram* v *The Financial Commissioner, & Ors. (1),* in knocking out the claim of the appellants based upon two essential ingredients mentioned above. Even with regard to 12 biggas of land comprised in Khasra Nos. 1118 and 1119, which, as mentioned above, as per the finding of learned Single Judge, were in continuous possession of the appellants and for which they answered the pre-requisites for obtaining proprietary rights, learned Single Judge held that they were not entitled to have even that for the reason that there had been partition between Bhag Singh and his sons in December, 1957 and, therefore, holding of the landowners was within their permissible area. Partition of land in the family, even if deemed to be a disposition, would be relevant only for the purpose of Section 32-FF of the Act of 1955, meaning thereby it is only with regard to surplus area or utilisation thereof that such a partition could be ignored. In other words, where it concerns, not the surplus area but merely acquisition of proprietary rights by the tenants, partition between father and sons could not, in terms of Section 32-KK, be ignored, further held the learned Single Judge.

(18) Mr. Jasbir Singh, learned counsel representing the appellants has very serious objections to the twin findings recorded by learned Single Judge in rejecting the claim of appellants for grant of proprietary rights and in his endeavour to show that the said findings can not possibly sustain, he has raised multi-faced contentions. The first contention of Mr. Jasbir Singh, is that sons of Bhag Singh were not even competent to challenge the order that came to be conceded by their father and further that the alleged partition between father and sons had since been ignored by the concerned authorities dealing with surplus area of Bhag Singh. The said order had achieved finality. It has further been urged that once Bhag Singh had taken full advantage of land being in possession of tenants, i.e., appellants, in proceedings, culminating into an order whereby no land owned by him was declared to be surplus, his sons could not turn around and plead partition and later, on that basis claim that the land in occupation of tenants was owne by them and was in their permissible area. It has further been urged by learned counsel that disposition of land that may reduce the surplus area after introduction of the Act of 1955 is impermissible under the provisions of the Act, be it for the purposes of surplus area, i.e., for allotment of same to the tenants or with regard to conferment of

(1) 1971 RLR 87

proprietary rights to the tenants who were already in possession and still further that insofar as essential ingredients for acquisition of proprietary rights pertaining to possession of the appellants over a period of 12 years on the date of introduction of the Act and when application is made, could not come in their way in the facts and circumstances of the case and further that in view of the conceded order that came to be passed, the requirement of proof of essential ingredients stood obviated.

(19) Mr. Sarjit Singh, learned counsel for the petitioners, however, joins issues with the counsel for the appellants and seeks to support the judgment of learned Single Judge.

(20) Having heard learned counsel for the parties at great length, we find considerable merit in the contentions raised by learned counsel for the appellants. Reverting to the facts of this case, it may be recalled that application filed by the appellants for grant of proprietary rights came to be allowed vide orders dated 6th March, 1965 when Bhag Singh himself appeared before the Prescribed Authority and conceded the claim of appellants. Meanwhile, Collector, Fatehgarh Sahib, had declared some area belonging to Bhag Singh as surplus vide order dated 27th July, 1960. Civil Writ Petition filed by Bhag Singh against the order aforesaid was dismissed by this Court on 18th January, 1965. In surplus area proceedings, Bhag Singh specifically raised an issue of partition between him and his sons dated 10th December, 1957. It may be mentioned at this stage that it was a case of an oral partition, mutation whereof was entered on 10th December, 1957 and sanctioned on 19th December, 1957. This contention was rejected by the Collector and writ petition filed against the order of Collector, as mentioned above, was also dismissed. While disposing of the writ petition, it was specifically observed by this Court that during the period Bhag Singh did not agitate the matter, rights of third parties had also intervened. Without caring for the dismissal of the writ petition and not even disclosing the same, Bhag Singh filed revision against order of Collector dated 27th July, 1960 in 1968. He was successful in getting an order of remand based upon evaluation of his land in Kharif, 1956, i.e., on the commencement of the Act of 1955. It is interesting to note that even though remand was for a specific purpose, i.e., to redetermine the permissible area in accordance with law after giving notice to the tenants and transferees from Bhag Singh between 21st August, 1956 and 30th July, 1958, the Collector, while re-determining the surplus area of Bhag Singh, vide orders dated 8th August, 1974, on a plea raised by none other than Bhag Singh, held that out of 41.63 standard acres of land, 17.09 standard acres of land was under possession of tenants whereas, only remaining area measuring 24.54 standard acres was in self-cultivation of landowner. Thus, Bhag Singh was able to obtain an order whereby

no land of his was to be declared as surplus. There was a complete somersault in stand taken by Bhag Singh. Whereas, in earlier proceedings upto the High Court, he was pleading partition between him and his sons, he now started asserting that land under the occupation of tenants could not be computed for the purposes of surplus area. It appears to this Court that even though it was specifically ordered by the Commissioner while remanding the case that notice to the tenants and transferees from Bhag Singh should be given, insofar as appellants are concerned, they were not heard in the proceedings culminating into an order passed by the Collector on remand, primarily for the reason that insofar as land under their occupation is concerned, same was not to be affected. Having achieved the object in effacing the earlier order of Collector, it further appears to this Court that sons of Bhag Singh, taking a dead inert affair of partition, got around the tenants, again interestingly, without disclosing the proceedings initiated by Bhag Sigh in surplus area case.

(21) In the backdrop of events, as fully detailed above, could sons of Bhag Singh take advantage of partition, mutation with regard to which came to be sanctioned on 19th December, 1957, is the question. After giving our anxious thoughts to the issue involved in the matter, we have come to a definite conclusion that plea based upon partition could not at all be raised by sons of Bhag Singh. The plea of partition, followed by mutation, in our view, would confer no right. Mutations do not confer title apart, once Bhag Singh had disowned the said partition, orally as well as in writing in the surplus area proceedings, sons of Bhag Singh could not possibly claim the land, subject matter of partition, as belonging to them. Sons of Bhag Singh could, thus, venture no proceedings against an order that came to be conceded by Bhag Singh and, therefore, appeal, two revisions and writ petition filed on their behalf, were wholly incompetent and deserved to be dismissed on that ground alone.

(22) Incompetence of petitioners to challenge order conferring proprietary rights upon the appellants can be viewed, with the same result, from yet another angle. Section 29-A of the Act of 1955, entitles even a landowner to make an application requiring such persons, as are entitled to acquire proprietary rights in respect of land comprising in their tenancies, if such persons may fail to make an application under sub-section (1) of Section 29-A, within a period of one year. If such an application is filed by the landowner, it has to be disposed of in accordance with the provisions of Section 22(2) as if such an application was made by the persons entitled to acquire proprietary rights. In the present case, Bhag Singh himself appeared and conceded the claim of

appellants before the Prescribed Authority. While so appearing and conceding the case, he certainly abandoned the partition between him and his sons. Oral partition came into being of 10th December, 1957 whereas Bhag Singh consented to the claim of appellants while specifically making an application for that purpose on 7th May, 1965 despite the fact that his sons were party- respondents in the said application. Consent of Bhag Singh has to pre-suppose that he was the owner of land, subject matter of application for grant of proprietary rights and further that partition, if any, had since been ignored. He being the owner, therefore, his sons could not challenge the order of Collector in appeal, revisions and writ petition.

(23) Having held that sons of Bhag Singh, i.e., petitioners, had no right to challenge an order conferring proprietary rights on the appellants, nothing else normally survives for discussion but, inasmuch as learned counsel for the parties have addressed arguments on validity of partition and even if the same is valid, the effect thereof, we would like to determine these questions as well. Mr. Jasbir Singh, learned counsel for the appellants contends that an oral partition between father and sons in itself would not pre-suppose that Bhag Singh and his sons were constituting a Joint Hindu Family and further that the property in the hands of Bhag Singh was Hindu Coparcenary Property. It is only if the sons of Bhag Singh were coparceners with his father and property was Hindu coparcenary Property that the sons of Bhag Singh would acquire right in the property by birth. In order to lay claim on the property in dispute, sons of Bhag Singh had necessarily to prove that the same was Hindu Coparcenary Property. Learned counsel appears to be right insofar as at least his contention based upon Hindu coparcenary property is concerned. It is the cardinal doctrine of the Mitakshara law that property inherited by a Hindu from his father, father's father, or father's father's father is ancestral property (unobstructed heritage) as regards his own male issue, i.e., his son, grandson, great grandson and that his male issues acquire an interest in it from the moment of their birth and they become coparceners with their paternal ancestor in such property immediately on their birth. Even if one is to assume that in the ancestral property, sons of a landowner would have right by birth, then also the property has to be such which might have been inherited by a male Hindu from his father, father's father or father's father's father. Para 223 of the Principles of Hindu Law by S.T. Desai (Sixteenth Edition) would support what we have said above. Insofar as Hindu Coparcenary is concerned, as per para 213 of the same Edition, is a much narrower body than a joint family. Generally speaking, it includes only those persons, who acquire by birth an interest in the joint or coparcenary property. These are the

sons, grandsons and great-grandsons of the holder of the joint property for the time being, in other words, the three generations, next to the holder in unbroken male descent. In the present case, there is not an iota of proof that may suggest that the property was coparcenary or ancestral property and, therefore, sons of Bhag Singh have right in the same by birth. If the property was not Hindu Coparcenary Property or ancestral property in the hands of Bhag Singh, his sons could not get same by way of partition.

(24) The question, as mentioned above, that too has been debated before us is that assuming it was a case of valid partition, having been effected between Bhag Singh and his sons, what would be its effect on the rights of the appellants in securing proprietary rights under Chapter IV of the Act of 1955. Chapter IV deals with acquisition of proprietary rights by tenants. Section 20 in Chapter IV defines 'tenant' as defined in clause (k) of Section 2 and who is not liable to be ejected under clauses (a) and (b) of sub-section (1) of Section 7A or under clauses (a) and (b) of sub-section (2) of Section 7A. Section 2(k) in turn refers to the Punjab Tenancy Act, 1887. 'Tenant' has the meaning assigned to it in the Punjab Tenancy Act, 1887. It does not include a person, who holds a right of occupancy or who is relative of the tenant within the meaning of sub-clause (2) of clause (g). Section 7A deals with grounds for eviction of a tenant which are in addition to such grounds mentioned in Section 7. Sub-clauses (a) and (b) of Section 7A deal with tenant who can be ejected on the specified grounds, envisaged under the Act. Clause (a) of Section 7A pertains to a tenant, who has been in occupation of land reserved by landowner for his personal cultivation whereas clause (b) is again to the same effect, i.e., it deals with a landowner, who owns thirty standard acres or less of land and the land falls within his permissible limit. In other words, if a tenant is occupying an area which is in excess of permissible area of the landowner, he can not be ejected on any of the grounds, specified under the Act. Sub-section (2) of Section 7A also deals with the tenants, who can not be evicted from the land in their occupation, even if the grounds for eviction, as envisaged under sub-section (1) of Section 7A are available to him. Sub-Section (2) of Section 7A reads thus :—

> "(2) No tenant, who immediately preceding the commencement of the President's Act has held any land continuously for a period of twelve years, or more under the same landowner or his predecessor in title, shall be ejected on the grounds specified in sub-section (1)-
>
> (a) from any area of land, if the area under the personal

cultivation of the tenant does not exceed fifteen standard acres, or

(b) from an area of fifteen standard acres, if the area under the personal cultivation of the tenant exceeds fifteen stands acres".

(25) There is absolutely no dispute in the present case that insofar as appellants are concerned, they were not occupying the permissible area of landowner and they were not liable for eviction in view of provisions contained in Section 7A of the Act of 1955. It is only partition that came into being between Bhag Singh and his sons by virtue of which it is asserted by the petitioners that the land came to be owned by them and, therefore, the land, occupied by the appellants, was not in excess of their permissible area. If, therefore, even though valid, this partition is to be ignored or would have no effect on the acquisition of proprietary rights of the tenants, by virtue of other provisions contained in the Act itself, the appellants would still be within their rights to acquire land in dispute. Section 32 which finds mention in Chapter IV, dealing with acquisition of proprietary rights by the tenants, and which has a great bearing upon the controversy in issue, reads thus :—

"32. Certain transfers not affect rights of tenants under this Chanpter (1) No transfer of land made by a landowner after the commencement of the President's Act shall affect the right of any person to acquire proprietary rights in such land under this Chapter.

(2) If any question arises whether any transfer of land does or does not affect the right of any person to acquire proprietary rights in such land, the question shall be referred to the prescribed authority for its decision".

(26) Mr. Jasbir Singh, on the basis of Section 32, vehemently contends that partition between father and sons is nothing but transfer and even if, therefore, same is valid, it would not come in the way of appellants in acquiring proprietary rights. It is further the contention of learned counsel that even if partition between father and sons is not to be treated as transfer within the meaning of Section 32, Section 32KK, clarifying that land owned by Hindu Undivided Family is deemed to be land of one owner, would result in ignoring the partition or giving no effect to the same.

(27) Mr. Sarjit Singh, learned counsel for the petitioners, on the other hand, states that partition between father and sons does not amount to transfer, of land as envisaged under Section 32 of the Act and introduction of Section 32KK clarifying that land owned by Hindu undivided family is deemed to be land of one owner, introduced in 1962 in Chapter IV-A, dealing with ceiling on land and acquisition as also disposal of surplus area, would not make the least difference as such a clarification came into being only for the purpose of vesting or allotment of surplus area and not for acquisition of proprietary rights by the tenants.

(28) With a view to appreciate the controversy, as canvassed, it is necessary to go into the scheme of the Act as also introduction and addition of new Chapters and Sections in the Act of 1955 from time to time and further to keep in view the objects of the Act. The Principal Act came into force on the 6th March, 1955. It was amended in 1956 as per amendment Act 15 of 1956 which came into force on the 30th October, 1956. That Act incorporated into the principal Act Chapter 4A which provided for Government taking over the surplus lands in the hands of a landowner, i.e., the lands in excess of the permissible limit. After the amendment came into force, it appears, several alienations were effected by the landowners to get out of the reach of the law inasmuch as neither the principal Act nor the amendment effected in 1956 prohibited any alienation. This necessitated introduction of the Pepsu Tenancy and Agricultural Lands (Amendment) Act No. III of 1959 which was made operative from 19th January, 1959. Among other provisions, Amendment Act incorporated into the Act of 1955, Section 32FF which reads as follows :—

> "32FF. Certain transfers not to affect the surplus area :—Save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance or up to 30th July, 1958 by a landless person, or a small landowner, not being a relation as prescribed of the person making the transfer or disposition of land, for consideration up to an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit, no transfer or other disposition of land effected after 21st August, 1956, shall affect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposition :
>
> Provided that any person who has received any advantage under such transfer or disposition of land shall be bound to restore

it, or to make compensation for it, to the person from whom he received it".

(29) By virtue of some judicial pronouncements, partition between father and sons was not held to be a disposition, which, as per common stand of learned counsel for the parties, necessitated introduction of the Pepsu Tenancy and Agricultural Lands (Amendment and Validation) Act No. XVI of 1962. It came into force on 24th July, 1962. Section 7 of the Act aforesaid is relevant inasmuch as it is by virtue of the said Section that Section 32-KK came to be inserted. Same reads thus :-

"7. Insertion of new section 32KK in Pepsu Act 13 of 1955-After Section 32K of the principal Act, the following sections shall be inserted, namely :-

32KK. Land owned by Hindu Undivided family to be deemed land of landowner.- Notwithstanding anything contained in this Act or any other law for the time being in force :-

(a) Where, immediately before the commencement of this Act, a landowner and his descendants constitute a Hindu undivided family, the land owned by such family shall for the purposes of this Act, be deemed to be the land of that landowner and no descendant shall, as member of such family, be entitled to claim that in respect of his share of such land he is a landowner in his own right; and

(b) a partition of land owned by a Hindu undivided family referred to in clause (a) shall be deemed to be a disposition of land for the purposes of Section 32-FF.

Explanation- In this section, the expression "descendant" includes an adopted son".

(30) Section 1 of the said Act sets out the short title and commencement of the Act. That section reads :-

"1.(1) This Act may be called the Pepsu Tenancy and Agricultural Lands (Amendment and Validation) Act, 1962.

(2) Section 2, section 4, section 5, section 7 and section 10 shall be deemed to have come into force on the 30th day of October, 1956 and the remaining provisions of this Act shall come into force at once".

(31) This Court, however, held that Section 32KK had become part of the principal Act, i.e., it shall be effective from the date when principal Act came into force. This interpretation of Section 32KK was not held to be correct by the apex Court in *Arjan Singh & Anr.* v. *The State of Punjab & Ors. (2)* wherein it was observed that "on a reading of the various provisions of the Pepsu Tenancy and Agricultural Lands (Amendment and Validation) Act, 1962, it appears that the legislature intended that Section 7 of the Amendment Act introduced into the principal Act section 32KK should be deemed to have come into force on the 30th October, 1956. The words 'this Act' in Section 7 of the Amendment Act, were intended to refer to the Amendment Act and not the principal Act".

(32) The objects of the Act of 1955 have been detailed, once again, by the Supreme Court in *Inder Singh & Ors.* v *The State of Punjab & Ors., (3)* The same are stated to be (a) to secure the rights of tenants; (b) to provide for acquisition of proprietary rights in the land to the tenant, (c) to provide for permissible limit of 30 standard acres, (d) to acquire surplus areas and distribute them amongst certain classes of persons including landless persons, and (e) to provide for compensation at prescribed rates payable by tenants and by Government on its acquiring surplus land. The principle laid down by the Act is that no person, whether a landowner or tenant, should hold land more than the permissible area so that the surplus land can be distributed amongst the more needy sections of society. While giving the aforesaid objects of the Act of 1955, it was further observed that "in following this principle the Act lays down two corollaries, namely, (i) not to recognise any transfer or disposition made by a landowner after a certain date as otherwise the scheme of distribution of surplus land would be frustrated, and (ii) to equate an individual landowner and a Hindu undivided family consisting of a landowner and his descendants so that both the units are entitled to hold only the permissible area of the standard acres".

(33) From the various provisions of the principal Act as also the other Acts that came into being later in point of time, it is evident that partition effected between Bhag Singh and his sons, even if valid, needs to be ignored. It may be recalled that even as per the case projected by the petitioners themselves, the aforesaid partition came into being on 10th December, 1957, i.e., after introduction of Section 32 KK which, even though came into being in 1962, but has been held to be retrospective by the Supreme Court w.e.f. 30th October, 1956. If a

(2) 1969 RLR 82
(3) 1968 PLJ 33

partition is treated to be a transfer within the meaning of Section 32 of the Act of 1955, which, in the present case, is concededly, after the commencement of the principal Act, it shall not affect the right of appellants in acquiring proprietary rights. Section 32, as mentioned above, finds mention in Chapter IV dealing with acquisition of proprietary rights by tenants. However, if partition is not to be treated as a transfer, as is the case of petitioners, the matter would be covered by Section 32Kk inasmuch as even though the same finds mention in Chapter IV-A, dealing with ceiling on land and acquisition and disposal of surplus area, the same starts with a non-obstante clause. The same shall apply notwithstanding contained in the Act of 1955 or any other law for the time being in force. Bhag Singh, original landowner shall have to be held as owning the entire land, a part of which is stated to have been given to his sons by way of partition, irrespective of the fact that partition may not be held to be transfer of land either under the provisions of this Act or any other law for the time being in force.

(34) It is only because of status of Joint Hindu Family and character of coparcenary and Joint Hindu family property that it was held by this Court in *Jagan Nath & Ors.* v *The State of Punjab & Ors. (4)* on which Mr. Sarjit Singh, learned counsel for the petitioners, placed strong reliance, that "in the case of Joint Hindu Family property, no member can be said to own any specific share and it would, therefore, be useless to permit him to prove that he owns a particular share in any area of land. This really presents no practical difficulty as the members of a joint Hindu family owning joint property can separate at any time they wish to and no act outside their own volition is involved in such separation, and at any point of time therefore the share of each individual is readly determinable ..... We have, therefore, to consider whether at the time the members of a joint Hindu family decide to partition their property by assigning specific shares in it to individual members, any one of them passes any interest in any property to another. It is difficult to agree that any such thing happens when joint Hindu family property is partitioned. No one by that partition takes any property not previously belonging to him nor does any of them pass any interest in such property to another". Reliance for the aforesaid proposition has also been placed upon another Division Bench judgment in *Ranjit Singh & Ors.* v *The State of Punjab & Ors (5),* as also a Single Bench judgment of this Court in *Jagir Singh* v *Financial Commissioner & Ors. (6)* These three judgments, referred to above, have only recognised the law based upon the provisions of Hindu Law.

(4) 1962 PLR 22
(5) 1966 PLJ 8
(6) 1967 PLJ 312

Notwithstanding the principles enunciated in the Hindu Law, dealing with joint Hindu family property, where, immediately before the commencement of the Act of 1955, a landowner and his no descendants constituted a Hindu undivided family, the land owned by such family is deemed to be land of that landowner and descendant, as a member of such family, is entitled to claim that in respect of his share of such land, he is a landowner in his own right. The principles dealing with joint Hindu family property, pertaining to Joint Hindu Family, would give way to the provisions contained in Clause (a) of Section 32-KK. Contention of Mr. Sarjit Singh that Section 32-KK does not recognise partition or in other words, shall be deemed to be disposition of land only for the purpose of Section 32-FF as is clearly mentioned in clause (b) of the said Section, in our view, would not hold good for variety of reasons. Such an interpretation would straightaway defeat the object of the Act. Chapter IV deals with acquisition of proprietary rights by the tenants and one of the objects of the Act of 1955, as mentioned above, is to provide for acquisition of proprietary rights in the land to the tenants. To various objects, detailed by the Hon'ble Supreme Court in *Inder Singh's* case (supra), one corollary in following the objects is to equate an individual landowner and a Hindu undivided family consisting of a landowner and his descendants so that both the units are entitled to hold only the permissible area of standard acres. This object of the Act, if Section 32-KK is interpreted to apply only with regard to the provisions contained in Chapter IV-A, would be frustrated. Further, interpretation, as suggested by Mr. Sarjit Singh, would have different results pertaining to similar situations. Insofar as Chapter IV is concerned, same essentially deals with such tenants, who can not be evicted of the land occupied by them as they are not occupying the land that may be in permissible area of the landowner. By Chapter IV, such tenants, at the most, have a preferential right to be allotted lands under their tenancies than of those, to whom the same can be allotted after its declaration to be surplus in the hands of landowner under Chapter IV-A. The purpose of both Chapters IV and IV-A appears to be same, i.e., to allot land which is not permissible area of a landowner i.e., be it tenants, permissible area or surplus area. Applicability of Section 32-KK to Chapter IV-A is not disputed and that being so, the contention that said section would not apply to Chapter IV, which is for the same purpose as the Chapter IV-A, in our view, would not hold good. Still further, even if Clause (b) of Section 32-KK specifically refers to Section 32-FF, clause (a) of Section 32-KK, in our view, has the same effect, as contained in clause (b) of the said Section. If, immediately before the commencement of the Act, or as interpreted by the Hon'ble Supreme Court, from the date when Section 32KK came to be introduced, a landowner and his descendants constituting Hindu

undivided family, has to be treated as one unit, it would tantamount to de-recognising partition and, as mentioned above, would have the same result as envisaged under clause (b) of Section 32KK. Admittedly, insofar as clause (a) of Section 32-KK. is concerned, same is applicable to the provisions of whole of the Act and not to Chapter IV-A or for that matter to Section 32 FF alone.

(35) The matter can be examined from yet another angle with the same result. If Section 32 KK was not to apply to Chapter IV or, for that matter, was to apply to only, Section 32FF, there was no necessity at all of incorporating clause (a) of the said Section. It appears to this Court that two separate clauses (a) and (b) were provided by the Legislature for making it doubly sure that no one is permitted to defeat the objects of the Act, which, as mentioned above, are primarily to distribute surplus land or land, which is not within the permissible area of landowner, to tenants and landless persons.

(36) Validity of Section 32 KK was challenged and Hon'ble Supreme Court in *Inder Singh's case* (supra), while giving details of the objects of the Act of 1955, upheld the vires of Section 32KK by observing that "the contention that Section 32-KK of the Pepsu Tenancy and Agricultural Lands Act is not one relating to agrarian reform is hardly sustainable in view of the objects of the Act in general and of Section 32-KK in particular. Similarly, the contention that Section 32-KK has the effect of defeating the rights of a member of a Hindu undivided family from the family property also can not be sustained because his right in the permissible area retained by the landowner and his right to compensation in respect of the surplus area are not touched by the section. Nor is it possible to say that Section 32-KK results in the transfer of the rights of descendants of a landowner in the permissible or surplus area in favour of such landowner. Section 32-KK does not effect any change in the rights of the descendants as members of a Hindu undivided family or the relationship of the family inter-se except to the extent of depriving the descendants of their right to claim the ceiling area for each of them". The contention of Mr. Sarjit Singh that Section 32KK is applicable only to provisions contained in clause (a) has, thus, necessarily to be rejected. The counsel has, however, relied upon *Bhagat Gobind Singh* v *Punjab State & Ors. (7)* *Smt. Bhagwan Kaur* v *The State of Punjab & Ors (8)* and *Gurmej Singh & Anr.* v *The State of Punjab & Ors. (9)* but, this Court finds the judgments to be wholly irrelevant for the purposes of deciding the controversy in issue.

(7) 1963 PLR 105
(8) 1970 PLJ 202
(9) 1980 PLJ 540

(37) Having determined the main point, canvassed before this Court, still survives for adjudication is the plea raised by petitioners that appellants herein did not have the pre-requisites for grant of proprietary rights. This plea, it may be recalled, was upheld by leaned Single Judge. We have already mentioned in earlier part of the judgment that once the matter came to be conceded by Bhag Singh before the Prescribed Authority, wherein the appellants had made an application for grant of proprietary rights, there was no necessity for them to have proved that they were in possession of a particular piece of land continuously for the statutory period, i.e., in other words, the tenant must hold the same land continuously for twelve years or more preceding 3rd December, 1953. Before we may proceed further in this regard, it is pertinent to mention that the aforesaid finding came to be recorded on the basis of judgment of this Court in Jaisi Ram's case (supra). This judgment has since been over-ruled by the Hon'ble Supreme Court in *Inder Singh* v *The Financial Commissioner, Punjab & Ors (10)* The contention that a tenant, who had remained in continuous possession of 12 years prior to the President's Act 8 of 1953 had come into force, namely, 3rd December, 1953, alone is entitled to avail the remedy of Section 22 and otherwise he is liable to ejectment by the landlord under sub-section (2) of Section 7-A, has since been repelled by the Apex Court in *Inder Singh's case* (supra). It has further been held that "the object appears to be that a tenant immediately preceding the commencement of the President's Act 8 of 1953 shall continue to remain for a period of 12 years either under one landlord or his predecessor so as to tag on the continuous 12 years period. It does not appear to be that he should have remained in possession continuously for 12 years preceding the commencement of President's Act 8 of 1953. What is required to be satisfied is that the tenant must be a "tenant" defined under the Punjab Tenancy Act, 1887, be in possession of the land in his character as a tenant prior to the President's Act 8 of 1953 had come into force. Such a tenant is not liable to be ejected under clauses (a) and (b) of sub-section (1) of Section 7-A. He must have continuous possession for 12 years, either under one landlord or predecessor in title in the land leased out to the tenant to exercise the right under Section 22. No doubt, it is true that learned Judges of the Division Bench of the High Court had interpreted the sections in the manner in which the learned counsel has placed construction on sub-section (2) of Section 7-A, i.e., 12 years prior to President's Act 8 of 1953 had come into force. But with due respect, we find that such interpretation would defeat the very object of conferment of proprietary right on the tenant in occupation of the land which was in his possession.

(10) 1997 PLJ 52

The object of the Act is to confer proprietary title on the tenant in occupation of the agricultural land so that the tiller of the soil should get proprietary right over the land in his possession as tenant, despite the fact that he came into possession as a tenant at the commencement of Act 8 of 1953. Three conditions to be satisfied, as stated already are —(1) he must be a tenant defined under the Punjab Tenancy Act; (2) he was in possession of the land as on 3rd December, 1953; and (3) he was a tenant under the landowner or predecessor in title. He must have continuous 12 years before exercising the right to purchase proprietary right. The interpretation put up by the learned Judges, with due respect, would defeat the object of the provisions of the Act. Thus considered, we hold that the appellants have satisfied the requirements mentioned in Section 22. They are not liable to ejectment either under sub-section (1) or sub-section (2) of Section 7-A, as the case may be. They were in possession for 12 years. They are tenants under the Punjab Tenancy Act. They were in possession prior to 3rd December, 1953. They, thereby acquired the right to purchase the proprietary interest of the land held by them as a tenant".

(38) Despite the fact that interpretation given by Division Bench of this Court in *Jaisi Ram's case* (supra) with regard to pre-requisites for grant of proprietary rights has since not been approved by the Supreme Court, Mr. Sarjit Singh, still contends that insofar as requirement of continuous possession of same parcel of land is concerned, it still holds the field as that part of the judgment of the Division Bench was not upset by the Hon'ble Supreme Court. It may be recalled at this stage that learned Single Judge returned a finding to the effect aforesaid, i.e., the appellants were not in possession of same parcel of land all through from various orders passed by the concerned authorities from time to time. While dealing with order dated 30th November, 1965, passed by the Assistant Collector 1st Grade, Patiala, a finding came to be returned that appellants were recorded tenants over land measuring 41 biggas 11 biswas as per Khasra Girdawari of 1956-57 wereas as per Khasra Girdawari of 1957-58, the land under their cultivation was 63 bighas and 16 biswas and in 1958-59, it was 14 bighas and 13 biswas while in the year 1959-60, the area under their cultivation was 42 bighas and 16 biswas and finally in the Khasra Girdawari of 1960-61 to 1962-63, 42 bighas and 6 biswas of land was shown to be under their cultivation. It was further observed by the learned Single Judge that the Assistant collector thereafter proceeded to hold that the appellants were entitled to acquire proprietary rights in Khasra Nos. 1114 to 1120. Order dated 17th May, 1976, passed by the commissioner, patiala Division, Patiala, then came to be discussed by learned Single Judge. Dealing with the same, it was

observed that on 30th October, 1956, appellants were tenants on land comprised in Khasra Nos. 1105, 1106, 1107, 1111, 1112, 1113, 1118 and 1119, and that subsequently they appeared to have shifted to Khasra Nos. 114 to 1120, measuring 42 bighas 5 biswas, as per Khasra Girdawari for Kharif, 1960-61 to Rabi 1962-63. The contention of learned counsel for the petitioners that the appellants were in possession of land comprised in Khasra Nos. 1118 and 1119 when the Act came into force, was then accepted.

(39) If one is to read the order dated 30th November, 1965 passed by the Assistant Collector Ist Grade, Patiala, as also the findings of the Commissioner, Patiala Division, Patiala, in his order dated 17th May, 1976, it appears, the findings of learned Single Judge to the effect aforesaid can not sustain. In the first para of the order, the Assistant Collector has mentioned that appellants have made an application for grant of proprietary rights for land measuring 42 bighas and 6 biswas comprised in Khasra Nos. 1114 to 1120. In un-numbered para 4, it has further been mentioned that "from the perusal of the revenue record as well as from statement of Patwari, continuous tenancy of the applicants is proved. The respondents are big landowners and in possession of 38.69 standard acres according to Jamabandi for the year 1963-64. According to Jamabandi for the year 1950-60 the respondents were in possession of 45.22 standard acres". In the very next para, it has been mentioned that the appellants were in cultivating possession of land measuring 42 bighas and 11 biswas as per Khasra Girdawari for the year 1957-58 and 63 bighas and 16 biswas as per Khasra Girdawari for the year 1957-58 and land measuring 45 bighas and 13 biswas as per Khasra Girdawari for the year 1958-59, and as per Khasra girdawari for the year 1959-60, they were in possession of 42 bighas and 16 biswas and that Khasra girdawari for the year 1960-61 to 1962-63 shows them to be in possession of 42 bighas and 6 biswas. In the last but one para, appellants were held entitled to obtain proprietary rights with regard to land comprised in Khasra Nos. 1114 to 1120. There is nothing at all mentioned in order passed by the Assistant Collector that the possession of appellants in various years, as per Jamabandis, or for that matter, Khasra Girdawaris, was on different Khasra numbers of land. All that can be made out is that they were in possession at one point of time of larger area of land and at another time of a smaller area of land. It may be mentioned here that the appellants were granted proprietary rights with regard to land that may be minimum in their hands at any given time. Insofar as order dated May 17, 1976 passed by the Commissioner, Patiala is concerned, after noting the contention raised by counsel now representing the petitioners, that the appellants were not entitled to obtain proprietary

rights with regard to Khasra Nos. 1114 to 1120, the contention of counsel for the appellants to the effect that they were tenants on the land on 30th October, 1956 comprised in Khasra Nos. 1105, 1106, 1107, 1111, 1112, 1113, 1118 and 1119 measuring 41 bighas and 11 biswas and that application for grant of proprietary rights was made in respect of Khasra Nos. 1114 to 1120 measuring 42 bighas 6 biswas and the tenants were in occupation of the aforesaid land at the time of making the application, were noticed. The contention of learned counsel that the right of tenants to obtain proprietary rights could not be adverserly affected merely on the ground that their position had changed from one set of Khasra numbers to another till it could be proved that the appellants were not tenants on the land on 30th October, 1956, was then noticed by the learned Commissioner. After hearing learned counsel for the parties on the issue aforesaid, the Commissioner returned a finding to the effect that "The records shows that Jawan and Chanan Khan sons of Fatta were tenants on land comprising Khasra Nos. 1105, 1106, 1107, 1111, 1112, 1113, 1118 and 1119 on 30th October, 1956. Subsequently, they appear to have shifted to Khasra Nos. 1114 to 1120 measuring in all 42 bighas and 6 biswas as per girdawaris for the crops Kharif 1960 to Rabi 1962-63. Such an exchange in my view did not adversely affect the right of the tenants to obtain proprietary rights in the land". It may be recalled at this stage that even in the written statement filed in response to the Civil Writ Petiton No. 717 of 1979 it has, through out been the case of the appellants that it is because of mutual understanding that some Khasra numbers were exchanged between the landowners and tenants. The finding of the learned Commissioner with regard to exchange of some Khasra numbers between litigating parties is not reflected in the order passed by the learned Single Judge. Even though, when the appellants were not required to give any proof of their continuous possession over specific Khasra numbers at all relevant times, the matter having been conceded and, thus, obviating the necessity of proof, as held above, yet even if such an issue could be debated, on the facts as established, a finding had to be returned that if there was any change of some Khasra numbers, it was on the dint of exchange voluntarily made between the parties. If that be so, it can not be urged by the petitioners that the tenants were not in possession of same piece of land and, therefore, they were not entitled to grant of proprietary rights inasmuch as change in possession of some Khasra numbers was an outcome of bilateral arrangement, arrived at between the parties and it was not a case of abandonment of possession on some part of land.

(40) Some findings with regard to invalidity of order dated November 30, 1965 passed by the Assistant Collector has also been

recorded and Mr. Sarjit Singh supports such findings primarily on the ground that petitioners were minors and could not be bound by an order, conceded by Bhag Singh. The contention aforesaid, in our view, has to be rejected for the reason that there was no valid partition between Bhag Singh and his sons as also that if it be the case of petitoners, which it is, that the property was Joint Hindu Family property, then in that case, it is too well settled that when a suit was filed against the Manager of Joint Hindu Family, it is binding on the minor members of the family as well, as held by this Court in *Rajinder Kumar* v. *Sanatan Dharam Mahabir Dal (11).* Further, as mentioned above, petitioners could not plead partition between them and their father as such was not the stand of Bhag Sinigh in surplus proceedings.

(41) Learned counsel for the parties have cited some other judgments on various issues involved in this case, but there is no need to make mention of the same as we find the same to be either distinguishable on facts or not relevant.

(42) Before we may part with this order, we will like to mention that during the pendency of this appeal, appellants have filed Civil Misc. No. 105 of 2000 under Section 151 of the Code of Civil Procedure for placing on record copy of mutation No. 884 dated 10th December, 1957/19th December, 1957 as also copy of other dated 8th August 1974 passed by the Collector, Agrarian, Nabha, regarding surplus proceedings of Bhag Singh, as Annexures A-1 and A-2. Inasmuch as documents, brought on record, are relevant for disposal of this appeal, same are ordered to be placed on record. Mention of partition, resulting into mutation and order dated 8th August, 1974 has already been made at appropriate place. No further discussion is, thus, required on this application. Petitioners too filed Civil Misc. No. 128 of 2000 for placing additional documents on record. They sought to place on record a copy of mutation NO. 628 as Annexure R-6 and copy of consolidation proceedings and Naksha Haq Dar Var as Annexure R-7. It is pleaded in the application aforesaid that Bhag Singh had inherited the land from Chanan Singh which would be evident from mutatioin No. 629 of 24th January, 2003 BK. This mutation would show that land owned by Chanan was inherited by Bhag Singh and that Bhag Singh continued to own this land till consolidation. The land owned by him on the eve of consolidation was valued at Rs. 181/4/-and after making deduction on account of common purposes, he was found to be entitled to the value of Rs. 179/6/1 Ps. and he was allotted in lieu of this value land measuring 345 biggas and 19 biswas. Naksha Haq Dar Var and

(11) 1999 (3) PLR 752

consolidation proceedings would, according to petitioners, show that prior to consolidation Bhag Singh had 355 bighas and 15 biswas of land and after consolidation, he was allotted 345 bighas and 19 biswas and further that the pedigreetable would show that land owned by Chanan Singh and Bhag Singh was inherited by the petitioners. We are of the view that even if these documents are taken on record, same would not make any difference on merits of the case. Even though, it has been mentioned in the application aforesaid that pedigreetable has been produced, but the same is not there at all. Further, documents, Annexures R6 and R7 are not enough to prove that Chanan Singh was owner of land, subject-matter of dispute in the present case as the essential documents, to prove present Khasra Numbers, having been allotted in lieu of old Khasra Numbers, like, Khatauni Pamaish and Khatoni Istemal have not been produced on the records of the case. Further, assuming that the land in dispute was, at one point of time, owned by Chanan Singh and then came to be inherited by Bhag Singh and, therefore, partition of this land was permissible under the provisions of the Hindu Law, yet, as mentioned above, moment Bhag Singh took advantage of the land, occupied by the tenants in surplus proceedings, and managed to obtain an order whereby no land of his was declared to be surplus, it would amount to annulling or cancelling or de-recognising the partition between him and his sons. Surely, he could not state that he had partitioned the land with his sons as also that the said land belonged to him and since it was in occupation of tenants, same could not be computed or taken into consideration for determining his total holding for the purposes of surplus proceedings at one and same time.

(43) In view of the discussion made above, we are of the firm view that the judgment of learned Single Judge can not sustain. Same is, thus, set aside, resulting into dismissal of writ pettition and restoration of orders Annexures P-1 to P-4 dated 30th November, 1965, 28th November, 1973, 17th May, 1976 and 21st September, 1978 passed by the Assistant Collector Ist Grade, Patiala, Collector Patiala, Commissioner, Patiala Division, Patiala and Financial Commissioner, Punjab respectively. We are further of the view that this appeal deserves to be allowed with special costs.

(44) A citizen in this country, undoubtedly has right to vindicate his stand in any court of law, established in India, depending upon his cause and our judicial system is duty bound to look into all the grievances of the citizens aired by them. This vested right, however, can not be permitted to be abused. It is often seen that an unscrupulous litigant, even in a false, frivolous and vexatious litigation, which may

span over even decades gets away by simply getting his cause rejected. More often then not, no orders, that may deter him and others equally situate, are passed by the courts, thus, resulting into massive litigation and pendency of cases, which can not be transacted properly and speedily. Such a litigation is surely an impediment in the way of administration and dispensation of justice. Justice, in the process, in other matters, which do need proper attention of the Court, are delayed beyond measures which in turn result in endless sufferings and, in many cases, denial of justice. It appears that the time has come that the evil propensities of such unscrupulous litigants of curbed and, therefore, when the Court might find that either a claim or defence is sought to be propped up on false, frivolous and vexatious grounds and if such a finding is recorded, it must result into special or compensatory costs as that alone might serve a warning to all concerned and may also provide some sort of solace to the one, who has been harassed and tormented.

(45) Recalling the facts of the present case, it may be only mentioned that Bhag Singh and his successors-in-interest tried all tricks to outwit the law and, in the process, stifled the justified cause for a period of 36 years. They changed their stand, depending upon their convenience from time to time and were undeterred even in concealing the proceedings instituted in one Court to another where they shifted their stand. Their natural anxiety to save the land within the frame work of law is understandable but then in such a pursuit, if they were to go against law and base their defence all hog on false and frivolous grounds, they would certainly earn the wrath of the Court and asked to pay compensatory costs. We were thinking of burdening them with one lac rupees as costs but the fact that they, in this long drawn litigation, were able to get one order in their favour also from the learned Single Judge of this Court, where proper facts could not be projected, we reduce the costs to Rs. 50,000.

(46) The interest of justice predominantly demands further direction to be issued by us. Appellants, as mentioned above, are not in possession, having been forcibly evicted. we, therefore, direct the Assistant Collector 1st Grade, Fatehgarh Sahib to ensure that appellants are restored possession of land, from which they were dispossessed, within fifteen days from the date a copy of this order is made available to him. Office of this Court shall ensure that copy of order is sent to the Assistant Collector 1st Grade, Fatehgarh Sahib forthwith, who, after ensuring restoration of possession of the land to the appellants, subject-matter of their application resulting into grant of proprietary rights vide order dated 30th November, 1965, Annexure P-1, would

report compliance to the Registrar (General) of this Court. The Assistant Collector shall also ensure recovery of costs by issuing notice to the petitioners and, in the event, order of this Court is not complied with by the petitioners, he shall be at liberty to take all steps to do the needful, as envisaged under the provisions of law.

S.C.K.

Before G.S. Singhvi & S.S. Sudhalkar, JJ

DR. PYARA LAL GARG—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. No. 12211 of 1993

18th April, 2001

Constitution of India, 1950—Art. 226—Punjab Medical Education State Service (Class II) Rules, 1979—Rl. 9. Appendix 'C'— Selection of an M.S. (General Surgery) for appointment as teaching Lecturer (Paediatric Surgery)— Qualifications & teaching experience for recruitment prescribed under rules— 'Particular speciality'— Meaning of—Respondent not possessing prescribed qualifications— Not eligible to be considered for selection—Writ allowed, selection of respondent for appointment as Senior Lecturer (Paediatric Surgery) quashed being illegal.

Held, that the expression 'Postgraduate qualification in the particular speciality' appearing in sub-clause (ii) of clause 1 of Appendix 'C' means the particular branch/speciality/department in which the degree of M.S. or M.D. or F.R.C.S. is awarded and a person, who does not have postgraduate qualification in the concerned speciality, cannot be appointed as Senior Lecturer simply because he holds the postgraduate degree like M.S. (General Surgery) or M.D. (Medicine). Thus, respondent No. 6 who possessed the degree of M.S. (General Surgery) on the last date fixed for receipt of the application, was not eligible to be considered for selection for appointment as Senior Lecturer (Paediatric Surgery) and the Commision has gravely erred in selecting him for the advertised post. Therefore, the selection of respondent No. 6 for appointment as Senior Lecturer (Paediatric Surgery) is liable to