limits as may be extended from time to time, the petitioners could also raise objections when the same were invited under section 6(2) of the Act, as the municipal limits could extend to their area which adjoined the area already declared to be municipality.

(11) For the foregoing reasons, there is no merit in the writ petition which fails and is dismissed, with no order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Prem Chand Jain, J.

FINANCIAL COMMISSIONER, HARYANA AND OTHERS,—*Appellants.*

versus

KELA DEVI AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 8 of 1969

May 12, 1969.

Punjab Security of Land Tenures Act (X of 1953)—Sections 10-A and 10-B—Punjab Security of Land Tenures Rules (1956)—Rules 20-A and 20-D—Allotment of surplus area to tenants—Whether amounts to utilization of such areas—Delivery of possession to the tenants—Whether essential to complete the utilization.

Held, that after an area of land with a land-owner is declared surplus and a tenant is selected for allotment of the same as a measure of resettlement, various steps have to be completed for the utilization of the land culminating in the delivery of possession of the land to the tenant resettled. Not until possession of the land in surplus area of a landowner is delivered to a tenant to be resettled on it, after allotment of the land to him, is the land utilized within the meaning and scope of sections 10-A and 10-B of Punjab Security of Land Tenures Act. If the tenant does not take possession of the land, his allotment is liable to be cancelled under rule 20-D of Punjab Security of Land Tenures Rules and the land is then to be utilized for resettlement of another tenant. Hence until the resettlement is complete by the delivery of possession of the land to a tenant, the utilization of the land cannot be said to be complete. (Para 5)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment, dated 29th October, 1968 passed by the Hon'ble Mr. Justice Bal Raj Tuli, in Civil Writ No. 2782 of 1968.

G. C. MITTAL, ADVOCATE FOR ADVOCATE-GENERAL (HARYANA), for the Appellants.

D. S. KANG, ADVOCATE, for the Respondents.

JUDGMENT

Mehar Singh, C.J.—On November 25, 1959, the Collector (Surplus), Nuh, in Gurgaon District, appellant 3, declared 6 standard acres and 8 standard units of land as surplus with Nathi out of his holding of 36 standard acres and 8 standard units, bringing his holding within the permissible limit of 30 standard acres. On July 14, 1965, Nathi died leaving him surviving his widow Kela Devi, respondent 1, and his mother Mando, respondent 2, both heirs to his estate.

(2) The respondents made an application to appellant 3 under sections 10-A(b) and 10-B of the Punjab Security of Land Tenures Act, 1953 (Punjab Act 10 of 1953), that on the death of Nathi they had inherited his estate as his heirs, with the result that the holding in the hands of each, divided into two halfs, came to be less than the permissible area of 30 standard acres and, the land declared surplus in the hands of Nathi deceased not having been utilised, in their hands the holdings were below the permissible limit, thus leaving no surplus area utilizable under section 10-A(a) of the Act. The application was dismissed by appellant 3 on March 13, 1967, on the ground that the area declared surplus from the holding of Nathi deceased had been allotted to various tenants and thus could not be excluded from the surplus pool. An appeal by the respondents was dismissed by the Commissioner of Ambala, appellant 2, on January 30, 1968, on the ground that an order of allotment of surplus land should be considered as utilization of such land, obviously under clause (a) of section 10-A of the Act. A revision application by the respondents to the Financial Commissioner, appellant 1, met the same fate on May 8, 1968, on the same ground. It was after that that the respondents filed a petition under Articles 226 and 227 of the Constitution seeking that the orders of the appellants be quashed and appropriate writ, order or direction be issued that the respondents are small land-owners with whom there is no surplus land. In the return on behalf of the appellants it was said that 'the petitioners (respondents) had no locus standi when the surplus area of the deceased land-owner was declared and allotted to the eligible tenants as detailed below. Since the land-in-dispute was allotted

to the tenants during the life-time of the deceased land-owner except 8 Kanals in village Ghelab, allotted on April 19, 1965, the petitioners (respondents) cannot claim the benefit of the saving provided in section 10-A(b)' of the Act. Then follows the list of fourteen pieces of land left by Nathi deceased allotted to various tenants detailed in that list. In regard to eight such pieces of land it is clearly stated that not only allotments had been made to tenants, but possessions of the pieces of land had also been delivered to them before the death of Nathi deceased on July 14, 1965. In regard to the remaining six pieces of land, although allotments had been made to various tenants shown in the list, but possessions of the same had not been delivered to those tenants by the time Nathi deceased died.

(3) There was thus for consideration before the learned Single Judge only one question, whether any part of the land declared surplus in the hands of Nathi deceased had not been utilized on the date of his death on July 14, 1965 ? The learned Judge did not accept the approach of the revenue authorities that mere allotment of surplus area to one or more tenants meant its utilization having regard to sections 10-A and 10-B of the Act. He was of the opinion that in view of the provisions of those sections and rules 20-A to 20-D of the Punjab Security of Land Tenures Rules, 1956, utilisation of surplus land is not complete until possession is delivered to the tenant or tenants to whom the land has been allotted. In this approach, having regard to the list filed with the return of the appellants, the learned Judge quashed the orders of the appellants in so far as land allotted to Roshan, Lahore and Mam Raj, tenants was concerned. Otherwise the petition of the respondents was dismissed. The land allotted to Roshan, Lahore and Mam Raj, tenants, is the land of which possession had not been delivered to those tenants before the date of the death of Nathi deceased.

(4) Here the argument of the learned counsel for the appellants is the same as before the learned Single Judge that after declaration of surplus area of a land-holder when such surplus area has been allotted to a tenant or tenants, that amounts to utilization of such area within the meaning and scope of sections 10-A and 10-B of the Act. The reply on the side of the respondents by their learned counsel is also the same as before the learned Judge that not until possession has been delivered is the utilization complete, because if

the tenant does not take possession of the land allotted, his allotment is liable to cancellation under rule 20-D of the 1956 Rules. I consider that the approach of the learned Single Judge in repelling the argument on the side of the appellants and accepting that on the side of the respondents is correct and unexceptional.

(5) In the Act, clause (a) of section 10-A gives power to the State Government or any officer empowered by it in this behalf to utilize any surplus area for resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of section 9. To this there is a saving in clause (b) of section 10-A that 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, if the land has not been utilized by the date of such acquisition or inheritance, and if by reason of such acquisition or inheritance the holding of a land-holder is reduced to the permissible limit of thirty standard acres or below, then the question of utilization of any area out of that previously declared surplus does not arise. It is, however, further provided, in section 10-B, that where succession has opened after the surplus area or any part thereof has been utilized under clause (a) of section 10-A, the saving specified in favour of an heir by inheritance under clause (b) of that section shall not apply in respect of the area so utilized. Now, the word 'utilized' or any of its variations has not been defined either in the Act or in the Rules. It is provided in section 19-C(1) of the Act that the Collector may order a land-owner to deliver possession of his surplus land to the person resettled on such land. This would indicate that not until possession has been delivered of the land allotted to a tenant, is the land utilized under clause (a) of section 10-A of the Act. This is supported by the scheme of the Rules for resettlement of tenants ejected or liable to ejectment as in Part IV of the 1956 Rules. Under rule 20-A, every tenant is given a certificate in the prescribed form describing clearly in it the land allotted to him. Rule 20-B then provides that after an order of allotment of any surplus area has been made, the Circle Revenue Officer is then to move the Collector for passing an order directing the land-owner to deliver possession of the land in his surplus area to the Circle Revenue Officer who is deemed to be an officer empowered by the Government under section 19-C of the Act for the purpose of delivery of possession. This is provided in sub-rule (1), and then sub-rule (2) of this rule says that every tenant resettled on the surplus area shall be bound to take possession of the land allotted to him within a period of two months of the date on which demarcation of the

land is made at site in his presence or within such extended period, as may, for reasons to be recorded in writing, be allowed by the Circle Revenue Officer shall himself deliver the possession to the tenant. According to clause (c) of rule 20-C, such a tenant is then required to execute a **Qabuliyat** or a **Patta** in the prescribed form in favour of the land-owner but before he is put in possession of the land. It is rule 20-D which deals with consequence of such a tenant not taking possession of the land and it says that 'In case, a tenant does not take possession of the surplus area allotted to him, for resettlement within the period specified in sub-rule (1) of rule 20-B, the allotment shall be liable to be cancelled and the area allotted to such tenant may be utilized for resettlement of another tenant.' The last sentence in this rule is a complete answer to the argument on the side of the appellants. Not until possession is taken by the tenant to whom surplus area has been allotted, is the land utilized. If he does not take possession, then his allottment is liable to cancellation. After the cancellation of such allotment, the area is then utilized for the resettlement of another tenant. If allotment alone meant resettlement of a tenant or utilization of the surplus land, then this part would run inconsistent with such a situation. So the approach of the learned Judge, as I have said, is correct that not until possession of the land in surplus area of a land-owner is delivered to a tenant to be resettled on it, after allotment of the land to him is the land utilized within the meaning and scope of sections 10-A and 10-B of the Act. After an area of land with a land-owner is declared surplus and a tenant is selected for allotment of the same as a measure of resettlement, various steps have to be completed for the utilization of the land culminating in the delivery of possession of the land to the tenant resettled. But if he does not take possession of the land, his allotment is liable to be cancelled and the land is then to be utilized for resettlement of another tenant. So that until the resettlement is complete by the delivery of possession of the land to a tenant, the utilization of the land cannot be said to be complete.

(6) In consequence, this appeal fails and is dismissed with costs, counsel's fee being Rs. 60.

Prem Chand Jain, J.—I agree.

K.S.K.