occurring at the end of the proviso should be construed so as to prevent assessee's sales being regarded as subsequent sales simply because his purchases were not from immediate registered dealer but were from two unregistered dealers who had purchased from the registered dealers. The words in that phrase are not "registered dealer" from whom he (the dealer effecting the subsequent sales) had purchased the goods". The words as they are have been rightly construed by the Division Bench of the High Court to mean a registered dealer "from whom the goods were (originally) purchased" or "from whom the goods were purchased (at the first stage)". Such construction is in consonance with the dominant intention of legislature to impose a levy on the sale at the first stage."

Faced with the aforesaid authoritative enunciation Mr. Sethi, the learned Additional Advocate General, Punjab, fairly conceded that the matter is now concluded in favour of the petitioner-assessee.

5. Accordingly, we render the answer to the question referred by the Tribunal (in paragraph No. 2 above), in the negative, that is, in favour of the petitioner-assessee and against the Revenue. In view of the earlier divergent judicial opinion the parties will bear their own costs.

D. S. Tewatia, J.—I agree.

K. S. Tiwana, J.—I also agree.

N.K.S.

Before K. S. Tiwana and M. M. Punchhi, JJ.

BABA BADRI DASS,—*Petitioner*

versus

DHARMA and others,—*Respondents.*

Civil Writ Petition No. 1196 *of* 1980.

August 26, 1981.

Punjab Security of Land Tenures Act (X of 1953)—Section 9(1)—Punjab Tenancy Act (XVI of 1887)—Section 4(3) & (6)—Dohlidar inducting tenant on his agricultural land—Dohlidar—Whether a 'landowner' so as to seek ejectment of the tenant—Dohli tenure—Attributes of—Stated.

Held, that the words 'landowner' and 'tenant' used in section 4(3) and 4(6) of the Punjab Tenancy Act, 1887 are contradistinct but the words 'landlord' and 'tenant' are corelated. For the purposes of Punjab Security of Land Tenures Act, 1953, one has to be a tenant of the landlord-landowner, and a landowner, unless he becomes a landlord to a tenant, can remain a landowner in isolation. It is also significant that 'tenant' means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person. So 'that other person' is the landlord who is presently entitled to rent and to whom the tenant is liable to pay, but for a special contract suspending or not enforcing the liability. And 'rent' means whatever is payable to a landlord in money, kind or service by a tenant on account of land held by him. Thus, in order to understand the attributes of landlord, landowner and tenant, the essential characteristic is that the existing liability to pay rent, if it is, or could be there, is only to the landlord-landowner and to none other and it is for this reason that the tenant holds land under that person. If he is not liable to pay rent or cannot otherwise be made so liable to pay it to the landowner he does not hold the land under him and thus would not be his tenant. Holding land under another person carries with it an existing obligation to pay not only rent, but to him and him alone, an amount of the use or occupation of the land under him. But if the obligation to pay rent, whether in money, kind or service, is directed towards some others and not towards the landowner, then the occupier's possession would not be that of a tenant, but would be of another kind which may evade strict defining. Thus, it appears that if the occupier of land in strict terms is not a tenant, then he being otherwise possessed of the land, would be a 'landowner' for the purposes of the Punjab Security of Land Tenures Act and it is immaterial if his rights otherwise do not amount to be that of an 'owner of land'. The concept of perpetual tenancy as conceived of in section 8 of the Punjab Tenancy Act in the light of sections 5, 6 and 7 thereof has also become non existent on account of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. Occupancy or perpetual tenants have been made owners of the land and even if the dohlidar is a perpetual tenant, there is no reason why such like tenure should be allowed to exist in the face of the aforementioned statute. As a matter of fact, the dohli tenure is not of a perpetual tenancy or is ever covered by the concept of tenancy at all. When the dohlidar is not a perpetual tenant, the dohli tenure is an instance of *malik kabza* and hence that of a landowner for the purposes of the Land Revenue Act and derivatively for the purposes of the Punjab Security of Land Tenures Act. He is a landowner because he is in possession of the land. As such dohlidar is a landowner and entitled to seek ejectment of his tenant under section 9(1) of the Punjab Security of Land Tenures Act.

(Paras 12, 15 and 16).

Baba Nand Ram *vs.* Gram Panchayat, 1976 P.L.J. 586.

Trikha and others *vs.* Dwarka Parshad, 1972 R.L.R. 563.

Bharat Dass *vs.* Gram Sabha and others, 1973 R.L.R. 280. *Over-ruled.*

Sewa Ram *vs.* Udegir, A.I.R. 1922 Lahore 126.

Khema Nand and others *vs* Kundan, A.I.R. 1937 Lahore 805. *Not Followed*

Petition under Articles 226/227 of the Constitution of India praying that the records pertaining to this case be called and in view of the foregoing submissions a writ of certiorari or other appropriate writ, order or direction be issued, quashing the order Annexure 'P-2' made by the Respondent No. 3, and restoring the order of the Assistant Collector which was affirmed on appeal by the learned Collector and on revision by the learned Divisional Commissioner. Also the cost of this petition be awarded.

Jawala Dass, Advocate, *for the Petitioner.*

Ram Rang, Advocate, *for the Respondent.*

JUDGMENT

M. M. Punchhi, J.

(1) This writ petition under Articles 226/227 of the Constitution of India requires determination of an interesting question of law, making it imperative on us to dig deep in antiques to discover what are the attributes of a *dohli* tenure and who is a *dohlidar.*

(2) The facts giving rise to this petition are simple and straight :—

Petitioner Baba Badri Dass, Chela of Baba Narotam Dass Bairagi, concededly is a *dohlidar* of agricultural land measuring 134 Kanals 14 Marlas, appropriately described in the petition, situate in village Bahu Akbarpur, Tehsil and District Rohtak. According to him, he succeeded to the property being the *chela* of Baba Narotam Dass, the erstwhile *dohlidar. Vide* registered deed dated 15th May, 1973, (copy Annexure P. 1) he leased out the aforesaid parcel of land to respondents Nos. 1 and 2 for a

period of ten years at the annual rent of Rs. 2,000. The rent was required to be paid on 15th May of each year. Since the rent was not paid regularly, he filed a petition for ejectment of the lessee/tenants under section 9(1) on Form-L of the Punjab Security of Land Tenures Act, 1953, (for short the Act) before the Assistant Collector 1st Grade, Rohtak. The tenants resisted the claim of the petitioner *inter alia* on the ground that the petitioner was not a 'land-owner' as defined in the Act, and, therefore, the petition for ejectment was incompetent. After recording evidence and hearing the respective contentions of the parties, the Assistant Collector 1st Grade, Rohtak, allowed the petition and ordered the ejectment of respondents No. 1 and 2. They unsuccessfully appealed before the Collector, Rohtak. The Commissioner of Ambala Division declined to interfere in the revision petition filed by them. Thev, thus, moved the Financial Commissioner, Haryana. Shri V. P. Johar, Financial Commissioner, Haryana,—*vide* his order dated 25th October, 1979 (copy Annexure P-2), allowed the petition and dismissed the ejectment application. This order is now impugned in the writ petition. The Motion Bench admitted the petition to a Division Bench and this is how the matter has been placed before us.

(3) As is plain from a reading of the impugned order of the Financial Commissioner, he was confronted with two Single Bench decisions of this Court, one in favour of the petitioner and the other in favour of the tenant-respondents. In *Mahant Sirya Nath* versus *The Financial Commissioner Haryana and others* (1), H. R. Sondhi, J. had taken the view that a Dohlidar would be a 'landowner' as the expression was used in the Act and thus the holdings in his hand would be subjected to the process of surplus area determination. This decision supported the contention of the petitioner that he was a landowner within the meaning of the Act and had a right to maintain the ejectment petition. On the other hand, in *Baba Nand Ram* vs. *Gram Panchayat of Village Malkos* (2), A. D. Koshal, J., (who now adorns the Supreme Court) came

(1) 1969 P.L.J. 27.

(2) 1976 P.L.J. 586.

to hold that the status of a Dohlidar does not differ from that of a tenant, albeit that a tenant is a Dohlidar in perpetuity. This decision went in favour of tenants-respondents. The Financial Commissioner opted for the view of A. D. Koshal, J. and held the petitioner to be a tenant over the land and thus accepting the petition, reversed the orders of the lower officers in the hierarchy. Plainly, we are required to refurbish and reconcile the two views and in doing so, we have to travel back decades in the realm of history.

(4) On the annexation of Punjab to British India the land tenures and rights of landowners came to be governed by two important pieces of legislation. The first was the Punjab Tenancy Act (XXVIII of 1868) which later came to be substituted by the Punjab Tenancy Act, 1887 (XVI of 1887), which held the field till after the independence of the country and still holds the field in a truncated way. The other one was the Punjab Land Revenue Act (XXXIII of 1871) which later came to be substituted by the Punjab Land Revenue Act, 1887 (XVII of 1887), which holds the field till date. These twin legislation i.e. Act XVI and XVII of 1887, have supplemented each other in a variety of ways. Behind each legislation prevails the experience gathered by the British Settlement Officers who had become acquainted with the complex traditions and behaviourisms of the various communities in the State of Punjab. Their experiences, the necessities of proceeding in particular directions in effecting settlements in regulating land revenue etc. came to be compiled in the Punjab Settlement Manual by Sir James M. Douie, R.C.S.I. I.C.S., the first edition of which was published on 6th October, 1899. There have been subsequent editions as well improving the previous one. We find the expression 'Dohli' or 'Dohlidar' significantly missing from both the Punjab Tenancy Act and the Punjab Land Revenue Act but alluded to only in the Manual in the following manner :—

Glossary of Vernacular Words

* * * * * *

* * * * * *

DHOLI—Death-bed gift of a small plot of land to a Brahman.

* * * * * *

BOOK II—*The Records of Rights.*

Chapter VIII.—Of tenures and the rights of landowners.

Paragraph 142. *Malik kabza.*

"Owners are sometimes found in village communities who do not belong to the brotherhood and are not sharers in the joint rights, profits and responsibilities of its members. Their proprietary title is a complete or undivided one, but it is confined to certain fields and deos not include any share in the village waste. The name by which this tenure is officially known in the Punjab is *malkiyat makbuza,* and the holder of it is called *malik kabza.* These terms indicate that the interest of the proprietor is limited to the land actually in his own possession. This land he can let, mortgage, or sell as he pleases, and he is responsible for the payment of its revenue. A familiar instance of this form of landholding is the right acquired by a Brahman, who receives a *dohli* or death-bed gift of a small plot of land from a landowner. The tenure is also created whenever a landowner sells a part of his holding without the appurtenant share of the village common land. The *malik kabza* tenure is common in the districts of Gujrat, Rawalpindi, Jhelum, Attock and Hazara, where it was introduced at the first regular settlement under circumstances which will be described in a later paragraph. In some cases the status of *malik kabza* is combined with that of an inferior proprietor. ....."

"175. Forms of ownership recognised,—Our officers had in fact to seek for a fair compromise of conflicting claims. In Gujarat, which was the first of the districts to be settled, and where the Sikh mill had ground exceeding small the old owners, known as *warishan* does not seem to have pressed their claims very hotly. But in Jhelum and Rawalpindi, which then included tahsils now in Attock, the former lords of the soils vehemently contested the proprietary right with the cultivating communities. The

original villages of the leading clans often covered very large areas, and cultivators had been located in outlying *dhoka*, or hamlets, whose occupants now claimed to be treated as entirely independent communities. Tenants in the parent villages alleged that they also possessed full rights as owners on the ground that the old landholders had received from them no sort of recognition of proprietorship. A similar state of things existed in Hazara, where the settlement did not begin till 1868. Four classes of owners emerged—

(a) talukdars or ala malikan,

(b) malikan or warisan,

(c) adna malikan, and

(d) malikan kabza.

The nature of the tenure of ownership of the last class has been described in paragraph 142. It was introduced into the settlement of the North-West districts of the Punjab under the orders of Mr. Thornton, the Commissioner of Rawalpindi. It has been remarked that he invented the name, but not the thing. At any rate the solution of the ownership problem which he proposed was not unfair, and where it was adopted, the form of landholding produced was not unlike that which had grown up spontaneously in some of the South-Western districts. Of course, new tenures of *malikan kabza* are created whenever land is sold without its appurtenant share in the common waste."

Mr. Douie's views in the Settlement Manual are treated with great respect but these cannot take place of statutory provisions. See *Sardara Singh and others* vs. *Sardara Singh and others* (3). Still he had feared while prefacing his first edition in 1899 in this manner :—

"..... But it must be remembered that the generation familiar with the early revenue history of the Punjab is

(3) 1976 P.L.J. 199.

rapidly passing away, and that experience shows that it is hard to say of any administrative controversy in India that it is really dead or of any policy that it has been finally abandoned. Some questions which seemed at one time to have been settled are sure to be revived, and it is well that those who may have to take part in the discussion should know, at least in broad outline, what in the past has been urged and decided in regard to them."

From the Settlement Manual it becomes clear that the *dohli* tenure was a holding the right of which had been acquired by a Brahman, who received it as such as a death-bed gift from a landowner, and that as a *dohlidar*, he was in the status of a *malik kabza*. It is also clearly recognised,—*vide* para 175 *ibid* that these tenures had spontaneously grown in the South-Western districts of Punjab, but had to be given a name when they were being enforced or made applicable in the Northern districts,—*vide* para 142 *ibid*. Being termed as *malik kabza*, the *dohlidar* was held under para 142 *ibid* to be responsible for the payment of land revenue and otherwise entitled to let, mortgage or sell it as he pleased.

(5) Judicial precedents, however, oblivious perhaps of the material available in the Punjab Settlement Manual, appear to have taken a course of their own. In *Sewa Ram* vs. *Udeqir* (4), a Division Bench consisting of Shadi Lal, C.J. and Harrison, J. spelled out the term *dohli* tenure in these terms :—

"The *dohli* tenure is a peculiar kind of tenure to be found in the south-eastern districts of Punjab. It is a rent-free grant of a small plot of land by the village community for the benefit of a temple, mosque or shrine, or to a person for a religious purpose. In the revenue records the proprietary body are recorded as the owners of the property, and the grantee is recorded as a tenant in the column of cultivation. So long as the purpose, for which the grant is made, is carried out, it cannot be resumed, but should the holder fail to carry out the duties of his office, the proprietors can eject him and put in some one else under a like tenure.

(4) A.I.R. 1922 Lahore 126.

It is beyond dispute that tenure of this kind cannot be alienated by sale or mortgage, and there can be little doubt that any alienation of that character, if made by the *dohlidar* would be absolutely void. This being the case, we are not prepared to accept the contention that the present *dohlidar* who is the son of the alienor, is precluded by any rule of law from impeaching the alienation made by his father. As the transaction was altogether void, we consider that even the alienor could have successfully pleaded in answer to the plaintiff's suit that the latter could not enforce it in a Court of law. There is, therefore, no reason why the defendant should not be able to impeach the alienation more especially when we remember that the office of a *dohlidar* is similar to that of a trustee, and that it is open to one trustee, to impeach the validity of an alienation made by his predecessor."

(6) In *Khema Nand and others* vs. *Kundan and another* (5), Monroe, J., taking aid of the dictum laid by Sir Shadi Lal, C.J. in the afore-referred to case, observed as follows :—

"The nature of *dholi* tenure is somewhat obscure : some account of it is to be found in the judgment in (*Sewa Ram* v. *Udegir*) (6). There it was stated that in this form of tenure, there is a rent-free grant of land by a village community for the benefit of a temple, mosque or shrine or to a person for religious purpose : in the revenue records, the proprietary body are recorded as the owners of the property and the grantee is recorded as a tenant in the column of cultivation.

It would appear, therefore, that on a grant in *dohli*, the proprietors continue to be proprietors of the land and the *dohlidar* in right of the temple and his successors become tenants in perpetuity."

(7) The obscurity of the tenure was noticed by Monroe, J. Yet the question whether a *dohlidar* was a trustee, as held in *Sewa*

(5) A.I.R. 1937 Lahore 805.

(6) 2 Lah. 313.

Ram's case (supra), or a tenant in perpetuity, as held in *Khema Nand's* case (supra), despite the obvious conflict, has remained unresolved and both views have been kept followed in decisions of this Court.

(8) In *Trikha and others* vs. *Dwarka Parshad and another,* (7). a Single Bench of this Court relying on *Sewa Ram's* case (supra) held that any alienation by a *dohlidar* would be *void ab initio*. It was held to be *non est*. The latter paragraph of the judgment in *Sewa Ram's* case, as extracted above, was quoted in the judgment to draw sustenance for the view taken. The view taken in *Trikha's* case was relied upon in *Dharma* vs. *Smt. Harbi,* (8) to hold that an alienation of a *dohli* was *void ab initio*. The Bench further went on to say that *dohli* was not a permanent tenure, and the moment the *dohlidar* fails to render the requisite services for which the *dohli* was created, the *dohli* rights are extinguished and the property reverts to the original proprietors. In *Bharat Dass* vs. *Gram Sabha Village Jahajgarh and others,* (9), the tenure in that case was spelled out to be a *dohli*. The former paragraph, as extracted above from *Sewa Ram's* case, was quoted in the judgment at two places to draw sustenance for the view taken.

(9) In none of these cases, the provisions of the Punjab Tenancy Act, 1887 or the Punjab Land Revenue Act, 1887 were noticed to come to those conclusions. *Sewa Ram's* case (supra) gave at the same time two sets of reasonings, in our view mutually exclusive, namely that a *dohlidar* is a trustee and his alienations of the *dohli* property/rights are *void ab initio* and the other that the *dohlidar* is a perpetual tenant. Now this kind of reasoning, with due respect, does not appeal to us. It is well understood in legal annals that a trustee is the legal owner of the property, the actual owner thereof having lost title thereto by the creation of a trust. The equitable ownership in the trust property vests in the beneficiaries. The trust is thus an incidence of dual ownership in which the creator of the trust no longer figures. A perpetual tenant, on

(7) 1972 R.L.R. 563.
(8) 1976 R.L.R. 641.
(9) 1973 R.L.R. 280.

the other hand, partakes the character of an occupancy tenant and in this relationship his landowner is not divested of the title to the property demised. See in this connection section 8 of the Punjab Tenancy Act, 1887 read in the light of sections 5, 6 and 7 thereof. These two warring concepts which trace their birth to *Sewa Ram's* case surfaced in the two cases referred to by the Financial Commissioner in his impugned order with which we will presently deal with in detail.

(10) In *Mahant Sirva Nath's* case (supra), H. R. Sodhi, J., for the first time took note of the definition of the word "land-owner" as given in the Punjab Security of Land Tenures Act read with the provisions of the Punjab Land Revenue Act. These are in the following terms :—

> " 'Land-owner' means a person defined as such in the Punjab Land Revenue Act, 1887 (Act XVII of 1887), and shall include an 'allottee' and 'lessee' as defined in clauses (b) and (c), respectively, of section 2 of the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (Act XXXVI of 1949) hereinafter referred to as the 'Resettlement Act.' "

The definition of the word 'landowner' will not be complete if what is provided in the Punjab Land Revenue Act, 1887, is not noticed simultaneously.

> " 'Land-owner' does not include a tenant or an assignee of land-revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land-revenue or of a sum recoverable as such as arrear and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate."

The view taken by H. R. Sodhi, J. was that the definition of the word 'land-owner' was not exhaustive and it would have its ordinary meaning except that certain clauses of persons have been excluded from that definition. *Sewa Ram's case* (supra) was taken

aid of to the limited extent by mentioning therein the purport of the first two sentences of the former paragraph of *Sewa Ram's* case extracted above. It was held by H. R. Sodhi, J. that the definition of the Word 'land-owner' covered the case of the then petitioner, who, for whatever be his status, was in the possession of the estate and in enjoyment of the profits thereof, though he might be utilising all or some of those profits for charitable or public purposes. The view also seems to have been taken on a concession more or less, as it was observed that Mr. Sarin (the learned counsel for the then petitioner) had not been able to seriously challenge this aspect of the matter and thus it was held that the then petitioner was a land-owner within the meaning of the Act so as to attract the provisions of the Act relating to the surplus area. This decision is on its own facts, unchallenged as these were by counsel and cannot be said to bear a statement of law. In *Baba Nand Ram's* case (supra), A. D. Koshal, J. on the other hand too took aid of the definition of the word 'tenant' as forthcoming in the following terms :—

> "47. (5) 'tenant' means a person who holds land under another person, and is, or but for a special contract would be liable to pay rent for that land to that other person; but it does not include—
>
> (a) an inferior landowner, or
>
> (b) a mortgagee of the rights of a landowner, or
>
> (c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, 1887 (XVII of 1887), for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear, or
>
> (d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it."

The definition will not be complete without adding the meaning from the Punjab Security of Land Tenures Act :—

> " 'Tenant' has the meaning assigned to it in the Punjab Tenancy Act, 1887 (Act XVI of 1887) and includes a subtenant, and self-cultivating lessee, but shall not include a present holder as defined in section 2 of the Resettlement Act."

A. D. Koshal, J. quoted in this decision the former paragraph as extracted above from *Sewa Ram's* case as also the latter paragraph as extracted from the decision of Monroe, J. in *Khema Nand's* case (supra). Yet the decision proceeded more on concession rather than determination of the attributes of the tenure of a *dohlidar*. There Mr. Harbhagwan Singh (the learned counsel for the then petitioner) took it that a *dohli* tenure was no different than from what had been stated in the aforementioned two cases. Therefore, the learned Judge had no hesitation in holding that the status of a *dohlidar* did not differ from that of a tenant, albeit that a tenant is a *dohlidar* in perpetuity. Afortiori it was held that the holder of a *dohli* tenure had no liability to pay rent, but then it was so because of the nature of the grant which is rent free and according to which the tenant, instead of paying the rent, has to perform certain obligations of a religious nature. According to the learned Judge, a *dohlidar* entered upon the land under a grant which is in the nature of a special contract and according to which he has to pay no rent but is to perform certain other obligations. In these circumstances, it was held in that case that a *dohlidar* being a tenant could sue for recovery of possession in case of dispossession under section 50 of the Punjab Tenancy Act for which the period of limitation was one year. It is plain that the case proceeded with the aid of concession. This decision may be good on its own facts but cannot be said to bear and with finality any statement of law. And this latter view of A. D. Koshal, J. has been made the basis of the impugned order of the Financial Commissioner.

(11) We must at this stage notice the borrowed meanings of the words 'rent' and 'landlord' from the Punjab Tenancy Act, 1887 for the purposes of the Act :—

> "4. (3) 'rent' means whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of land held by him."
>
> "4. (5) 'landlord' means a person under whom a tenant holds land, and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land."

(12) It is significant to notice that the words 'landowner' and 'tenant' are contradistinct but the words 'landlord' and 'tenant' are

correlated. For the purposes of the Act one has to be a tenant of the landlord-landowner, and a landowner, unless he becomes a landlord to a tenant, can remain a landowner in isolation. It is also significant that 'tenant' means a person who holds land *under another person*, and is, or but for a special contract would be, liable to pay rent for that land to *that other person* (emphasis supplied). So, 'that other person' is the landlord who is presently entitled to rent and to whom the tenant is liable to pay, but for a special contract suspending or not enforcing the liability. And 'rent' means whatever is *payable to a landlord* (emphasis supplied) in money, kind or service by a tenant on account of land held by him. Thus, in order to understand the attributes of landlord, landowner and tenant, the essential characteristic—as it appears to us—is that the existing liability to pay rent, if it is, or could be there, is only to the landlord-landowner and none other, and it is for this reason that the tenant holds land under that person. If he is not liable to pay rent, or cannot otherwise be made liable to pay it to the landowner, he does not hold the land under him and thus would not be his tenant. To put it differently, holding land under another person carries with it an existing obligation to pay not only rent, but to him and him alone, on account of the use or occupation of the land, held under him. But if the obligation to pay rent, whether in money, kind or service, is directed towards some others and not towards the landowner, then the occupier's possession would not be that of a tenant, but would be of another kind which may evade strict defining. Thus it appears to us that if the occupier of land is in strict terms not a tenant, then he being otherwise possessed of the land, would be a 'landowner' for the purposes of the Act, and it is immaterial if his rights otherwise do not amount to be that of an 'owner of land'. Distinction between these two terms has admirably been drawn in a Full Bench decision in *Buta* v. *Mst. Jiwani* (10) and till day the distinction has remained in vogue and unchallanged. An extract from the judgment would be worthwhile to reproduce :—

> "The word used in Section 111 is 'owner' not 'landowner', and in our opinion the two terms are not synonymous. 'Landowner' has a very wide signification and includes many persons whose interests in land are of a limited

(10) 82 Punjab Record 1898.

of ephemeral character, e.g., a farmer or transferee for revenue purposes or one, not expressly mentioned in the clause, who is in possession of an estate or any part thereof or in the enjoyment of any part of the profits of an estate. Had it been used in section 111 there would have been some ground for the contention that the widow's right to partition is indefeasible, for at all events her interest is much larger than that of the persons mentioned above.

The word 'owner' has not been defined in the Act, and according to the accepted canons of interpretation we must, unless the context negatives such a construction, take it to have been used in its ordinary sense. How the connotations of the term are somewhat indefinite and it is commonly applied to persons whose rights in property are unlimited as well as those whose rights are more or less restricted. In its widest, signification to use the language of Austin ownership means a 'right over a determinate thing indefinite in point of time, unrestricted in point of disposition and unlimited in point of duration'. The component rights of ownership fall under three heads, possession, enjoyment and disposition (per Sir M. Plowden, C.J.) in No. 107 (11)."

(13) In *Baba Nand Ram's case* (supra), the special contract conceived of by A. D. Koshal, J. in which the *dohlidar* undertakes not to pay any rent to the landowner but binds himself to perform certain other obligations to others, as it appears to us, is not 'a special contract' but for which he would be liable to pay rent for that land to 'that other person'. It appears to us that the service rendered by a *dohlidar* to institutions or persons other than the creator of the *dohli*, strictly speaking does not fall either within the concept of rent or within that of a tenant. The liability to pay rent to the creator of the *dohli*, or the latter's right to claim rent in the event of the terms of *dohli* not being faithfully observed, is altogether missing in the nature of the creation of the tenure. It is equally inconceivable how a validly created trust in the event of the trustee or his successors-in-interest failing or refusing to perform their duties could warrant the abolition of the trust causing

(11) Punjab Record 1887 page 246.

extinguishment of *dohli* rights or that the property reverts to the original proprietors. The observations of the Bench in *Dharma's* case (supra) are in the nature of *obiter dicta* and do not seem to have arisen on the facts of that case. We, therefore, hold that though a *dohlidar* is not an owner of the land as the term is well understood yet is otherwise a landowner for the purposes of the Act. The other questions whether he is a trustee or that his alienations are *void ab initio* do not arise in the present case, though we have our doubts about the correctness of the view in that regard taken by the Lahore High Court in *Sewa Ram's* case (supra).

(14) A passing reference need be made that out of the four clauses of owners mentioned to have emerged in paragraph 175 of Dousie's Settlement Manual, the *ala malikan* have ceased to exist and the *adna malikan* have come to be full proprietors. That instance of dual ownership was abolished by the Punjab Abolition of Ala Malikkiyat and Talukdari Act, 1932. This obliterates classes of owners mentioned at serial numbers (a) and (c) and merged in class mentioned at serial number (b). Just two kinds of owners are prevalent now—(i) who are owners of land or their heirs and (ii) land owners on the basis of possession.

(15) The concept of perpetual tenancy as conceived of in section 8 of the Punjab Tenancy Act in the light of sections 5, 6 and 7 has also become non-existent on account of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. Occupancy or perpetual tenants have been made owners of the land. This Act came about to carry out agrarian reforms and to remove the intermediaries. And if the *dohlidar* is a perpetual tenant as conceived of in *Sewa Ram's* and *Khema Nand's* cases (supra) of the Lahore High Court followed in the cases of *Bharat Dass* and *Baba Nand Ram* by this Court, then there is no reason why such like tenure should be allowed to exist in the face of the aforementioned statute. The reason is obvious. The succession to occupancy tenancy was governed by section 59 of the Punjab Tenancy Act whereas succession to the *dohli* tenure is either natural or traditional. The occupancy tenure is capable of sale carrying with it a premptory obligation to offer it in the first instance to the landowner. There is no such obligation in the *dohli* tenure treating it for the moment, though not holding, that it is transferable. The The occupancy tenancy rights are capable of being sold in execution of a decree against the occupancy tenant, but the rights of a

dohlidar are not subject to such permissible process of Court under the law as understood. Alienations made by occupancy tenants are voidable at the instance of the landowner. For these reasons, which are only some of them, we differ from the view that the *dohli* tenure is of a perpetual tenancy or is over covered by the concept of tenancy at all. The view to the contrary taken by above referred to two decisions of the Lahore High Court does not appear to us to be correct. We do not expressly follow the decisions of the Larore High Court in *Sewa Ram's* case and *Khema Nand's* case and overrule the Single Bench decisions afore-quoted taking the view based thereon on this aspect.

(16) Now when the *dohlidar* is not a perpetual tenant as held by us, signification of the *dohli* tenure in Douie's Settlement Manual as an instance of *malik kabza* and hence that of a landowner for the purposes of the Land Revenue Act and derivatively for the purposes of the Act, appears to us crystal clear. He is a landowner because he is in possession of the land. We take the view as taken by H. R. Sodhi, J., in *Mehant Siryo Nath's case* (supra) and held that a *dohli* tenure is an instance of *malik kabza* and a *dohlidar,* a landowner for the purposes of the Act.

(17) To be fair to the learned counsel for the respondent, a decision of the Supreme Court in *Tekan and others* v. *Ganeshi,* (12), may be noted. That is a case of a lessee. He sought ejectment of a tenant whom he had inducted. Here the lessee was holding land under his landowner and himself being a tenant was held disentitled to eject his inducted tenant under the Act. That decision has no applicability to the facts of the present case which are distinctly dissimilar.

(18) Reverting to the facts of the present case, the registered lease deed, Annexure P. 1, clearly mentioned that the petitioner had created the lease describing himself to be as the owner and possessor of the land as *dohlidar.* The respondents could not deny such title of their landowner. They had fought him on the level of reducing his statuts to that of a tenant wanting immunisation from ejectment. They have failed. In paragraph 3 of the petition, the landowner had asserted in categoric terms that the tenants have not paid to him the rent for two consecutive years. In reply thereto,

(12) 1962 P.L.J. 75.

the tenants-respondents have not even denied it. Rather asserting that the petition was not maintainable, they have taken the plea that they are not liable to pay any amount to the petitioner since his title as *dohlidar*, for some reasons asserted, is not finally settled. Why the status of the petitioner landowner as *dohlidar* is unsettled has not been projected before us. There is no assertion by the tenants that they have paid the rent, or if they had not paid such rent, what was the sufficient cause for non-payment. Thus it appears to us that the tenants-respondents had no other point to urge before the Financial Commissioner except the one which they chose to project before the Financial Commissioner and which he opted to decide. Though it was urged by the learned counsel for the respondents that we must send back the case to the Financial Commissioner for redecision on other questions which may be raisable in the revision petition, yet we are disinclined to accept that prayer as it appears to us that none has been highlighted in the return and none is so raisable. And at the same time recalling the well known Latin phrase *'interest reipublicae ut sit finis litium'*, we have thus chosen to put an end to this long standing dispute.

(19) For the foregoing reasons, this petition is allowed. The impugned order of the Financial Commissioner, Annexure P. 2, is hereby quashed. There would, however, be no order as to costs.

N. K. S.

FULL BENCH.

Before S. S. Sandhawalia, C.J., S. P. Goyal and I. S. Tiwana, JJ.

CHANDER BHAN,—*Petitioner.*

versus

THE FINANCIAL COMMISSIONER and others,—*Respondents.*

Civil Writ Petition No. 32 *of* 1980.

November 3, 1981.

Punjab Security of Land Tenures Act (X of 1953)—Sections 6, 10-A, 16 and 18—Some area in the hands of a big landowner declared surplus—Surplus area prior to its determination already sold to