

CWP Nos.6368 to 6373 of 2000 (O&M)

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CWP No.6373 of 2000 (O&M)

Jodha Ram (deceased) through his LR ...Petitioner

Versus

Financial Commissioner, Haryana and others ...Respondents

(2) CWP No.6370 of 2000 (O&M)

Om Prakash ...Petitioner

Versus

Financial Commissioner, Haryana and others ...Respondents

(3) CWP No.6372 of 2000 (O&M)

Lekh Ram (deceased) through his LRs and others ...Petitioners

Versus

Financial Commissioner, Haryana and others ...Respondents

(4) CWP No.6369 of 2000 (O&M)

Jodha Ram (deceased) through his LR ...Petitioner

Versus

Financial Commissioner, Haryana and others ...Respondents

(5) CWP No.6368 of 2000 (O&M)

Om Prakash ...Petitioner

Versus

Financial Commissioner, Haryana and others ...Respondents

(6) CWP No.6371 of 2000 (O&M)

Lekh Ram (deceased) through his LRs and others ...Petitioners

Versus

Financial Commissioner, Haryana and others ...Respondents

Date of decision:08th November, 2016

CWP Nos.6368 to 6373 of 2000 (O&M)

[2]

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Arun Jain, Senior Advocate, with
Mr. Varun Parkash & Mr. Manoj Sharma, Advocates,
for the petitioners.

Mr. P.P.Chahar, DAG, Haryana.

Mr. B.S.Rana, Senior Advocate, with
Mr. R.S.Malik, Advocate, for the private respondents.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of 6 petitions bearing CWP Nos.6368 to 6373 of 2000 as the facts and issues involved in all the writ petitions are common. However, for the sake of convenience, the facts are being extracted from CWP No.6373 of 2000.

This case has a chequered history which is summarized as under:-

One Om Parkash S/o Ravi Dutt was a big land owner. He entered into a partnership deed with Lauti Ram and Roop Ram on 29.10.1947 as per which 2/3rd share of the profit was to be retained by Om Parkash S/o Ravi Dutt and 1/3rd share by the other two partners. Since there was a dispute between the partners about the rendition of accounts, therefore, Om Parkash S/o Ravi Dutt filed a suit for dissolution of partnership deed and rendition of accounts on 04.11.1949. While the said suit was pending, Om Parkash S/o Ravi Dutt sold 169 Bigha 17 Biswas of land by way of three separate sale deeds to Jodha Ram, Rati Ram and Lekh Ram on 23.11.1953 and mutation No.234 was sanctioned in their favour on 12.09.1955. On 28.06.1960, land of Om Parkash S/o Ravi Dutt was declared surplus by the Collector (Agrarian), Sonapat, including the land

which had already been sold on 23.11.1953 to the petitioners. The consolidation took place in the year 1957-58 and the land measuring 169 Bigha 17 Biswas was converted into 287 Kanal 05 Marlas. The suit filed by Om Parkash S/o Ravi Dutt was decreed and the cross-objections filed by Lauti Ram, who was a defendant in the suit, were dismissed. The appeal filed by Lauti Ram bearing Civil Appeal No.41/13 was disposed of on 18.06.1970 by the District Judge, Rohtak, in which it was held that Lauti Ram etc. would be entitled to remain in possession of the land in question as tenants. Lauti Ram and Roop Ram filed execution of the decree dated 18.06.1970 in which the Executing Court passed the order on 15.02.1972 and possession was delivered to them in the capacity of tenants. It is pertinent to mention that in this execution, the vendees of the land in question, by virtue of the sale deed dated 23.11.1953, filed the objections because they were in possession after purchase of the land but since the Court had found Lauti Ram and Roop Ram entitled to possession as tenants, therefore, while executing the decree dated 18.06.1970, possession was delivered to them on 17.01.1973 after taking the same from the petitioners-vendees.

The petitioners-vendees then filed three applications under Section 9(1)(i) of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the "Act") seeking eviction of the private respondents herein, which were allowed by the Assistant Collector 1st Grade on 26.12.1975. The order of eviction dated 26.12.1975 was reversed by the Collector in appeal and was maintained by the Divisional Commissioner and the Financial Commissioner. Ultimately the writ petition filed against

those orders were dismissed in limine by this Court on 08.01.1981. The order of this Court passed in the proceedings initiated under Section 9(1)(i) of the Act was challenged before the Apex Court in which an interim order was passed on 08.11.1982 to the effect that *“the Financial Commissioner will determine the question of reasonable rent in the proceeding which is pending between the parties for eviction on the ground of rent. Upon determination of the reasonable rent, the respondents-tenants shall deposit arrears of rent in the same Court within a month after determination and shall deposit future rent in that Court from time to time in accordance with the agreement or usage. The deposit will be made without prejudice to the rights and contentions of the parties”*.

In pursuance of this order, the Financial Commissioner, vide his order dated 12.07.1989, determined the amount of rent to be deposited by the private respondents. However, it is stated that the private respondents did not choose to deposit the rent, as determined by the Financial Commissioner vide his order, referred to above. Ultimately, the appeal pending before the Supreme Court arising out of the proceedings initiated under Section 9(1)(i) of the Act was decided on 11.10.1993 holding that the petitioners cannot seek ejectment of the private respondents under Section 9(1)(i) of the Act in view of Section 10-A of the Act. As a matter of fact, while the proceedings under Section 9(1)(i) of the Act were pending, the petitioners initiated proceedings of seeking eviction of the respondents by filing applications on Form-L under Section 9(1)(ii) of the Act. Those applications were allowed by the Assistant Collector 1st Grade vide order dated 23.01.1978 observing that *“thus, there is no force in this*

CWP Nos.6368 to 6373 of 2000 (O&M)

[5]

contention of Party No.2. Since the Party No.2 had been given the possession as tenant, it was incumbent on him to pay the rent regularly. They did not pay the rent either to the previous owner or to the applicant. Thus, there is no force in objections raised by the Party No.2. The applicant is the owner of the land in suit which is proved from the revenue records. The Party No.2 are the tenants under it and they have not paid rent of the disputed crops to the owner nor have they assigned any sufficient reason for the lapse. Under these circumstances, I order the ejectment of Party No.2 from the suit land and because the Party No.2 have not demanded about making any reform in the suit land, they are not given any compensation in this connection". This order was upheld in appeal which was dismissed on 09.05.1978 by the Collector. The private respondents preferred revision before the Divisional Commissioner against the aforesaid orders and since the Divisional Commissioner did not possess the powers to revise the orders of the Collector, therefore, he referred the case to the Financial Commissioner for revision. The Financial Commissioner, who was seized of the six petitions i.e. RCR Nos.3, 4 & 6 of 1980-81 which were filed by the respondents against the recovery of rent and ROR No.67, 68 & 71 of 1980-81 which were filed by the respondents against the order of ejectment, dismissed the RCR Nos.3, 4 & 6 of 1980-81 and allowed the ROR Nos.67, 68 & 71 of 1980-81 vide his order dated 10.12.1998. The operative part of the order dated 10.12.1998 is reproduced as under:-

“9. Having accepted the fact that the land in dispute did not vest in the State Government on 23.12.1972, it becomes obvious that the land in dispute was not surplus land and that it was the

ownership of Jodha Ram etc. at the time when the Haryana Act of 1972 came into being. Here it deserves mention that as per provisions of the Punjab Act, the landowner continued to be the owner of his lands even after they were declared surplus and till such time as such surplus lands were purchased by the tenants as per provisions of the Act, he had the right to recover rent in respect of them. As mentioned earlier the possession of the land in dispute in this case was handed over to the revision petitioner tenant in the years 1972 and 1973 in pursuance of the orders of the District Judge dated 18.06.1970, as tenants on 1/3 batai. Thus Jodha Ram etc. respondents remain the owners of the land in dispute and the revision petitioners are tenants thereon. That being so I have no hesitation in upholding the decision of the Collector dated 09.05.1978 vide which he dismissed the revision petitioner's appeal and allowed recovery of rent in respect of land in dispute to be made from the revision petitioner tenants. I further order that the respondents would be entitled to recover the above rent with effect from 08.11.1982, the dated on which the Hon'ble Supreme Court made their interim order about payment of rent, with 10% interest compounded annually. The rent of the land in dispute, as worked out by the AC-1, has already been confirmed by the order of the Financial Commissioner dated 12.07.1989. The three revision petitions relating to recovery of rent against the order of the Collector dated 09.05.1978 i.e. RCR No.3, 4 & 6 of 1980-81 are therefore dismissed.

10. As for the ejectment of the revision petitioner tenants from the land in dispute, the same cannot be allowed in view of the clear directions of the Hon'ble Supreme Court contained in their orders dated 11.10.1993 (1994 PLJ 28). The 3 revision petitions relating to ejectment i.e. ROR Nos.67, 68 & 71 of 1980-81 are therefore accepted and the orders of the Collector dated 09.05.1978 in the matter are set aside.”

Now it was the turn of the petitioners to be aggrieved and challenge that order of the Financial Commissioner dated 10.12.1998 before this Court. Accordingly, the petitioners have filed the present six petitions, out of which CWP Nos.6373, 6370 and 6372 are against the orders of

ejectment and CWP Nos.6368, 6369 and 6371 are against the order by which the Financial Commissioner has dismissed the revision petitions filed by the respondents but holding the petitioners entitled to the arrears of rent from 08.11.1982 and not from the year 1973 onwards when the respondents had entered into possession by virtue of the order of the Executing Court.

It is pertinent to mention here that all the aforesaid six writ petitions were dismissed in limine, which led to the filing of six SLPs before the Supreme Court, which were disposed of by a common order dated 29.10.2009 and the matter was remanded back to this Court for decision afresh. In the order of remand, the Supreme Court has clarified that the applications filed under Section 9(1)(i) of the Act are different matter and the applications filed under Section 9(1)(ii) are not to be influenced by the order passed on the applications filed under Section 9(1)(i) of the Act. Besides this, the Supreme Court has also dealt with the aspect of rent in Civil Appeal Nos.5811-5816 of 2002, in which the operative part reads as under:-

“.....The question that arise for consideration in these appeals is as to whether the appellants are entitled for recovery of rent from the respondents as prayed for by them in their eviction petitions or only w.e.f. 8.1.1982 as awarded by the Financial Commissioner, relying on a decision of this Court in Jodha Ram's Case (supra). In Jodha Ram's Case as interim order was passed for payment of rent with 10% interest compounded annually. Be it noted that as to from what date the appellants are entitled to recover the rent from the respondents was not the subject matter that had arise for consideration by this Court. This aspect of the matter has not been considered by the High Court which summarily rejected the writ petitions filed by the appellants following its own orders without even adverting to the question that had fallen for

consideration.

For the aforesaid reasons the impugned order is set aside and the writ petitions shall stand restored to their original file for their disposal in accordance with law on merits uninfluenced by the observations, if any, made in this order.

It is needless to observe that all the writ petitions shall be heard together and disposed of. The appeals are accordingly allowed to the extent indicated above.

We request the High Court to dispose of the matters as expeditiously as possible, preferably within 6 months.”

Hence, in pursuance of the aforesaid order passed by the Supreme Court, all the aforesaid six writ petitions are listed for hearing.

Mr. Arun Jain, learned senior counsel for the petitioners, has firstly argued the batch of writ petitions pertaining to ejectment of the private respondents and has submitted that there is a relationship of landlord and tenant between the parties. The land has not been declared surplus and the respondents are in arrears of rent as they have not paid a penny since 1973 onwards. In order to establish the relationship of landlord and tenant between the parties, it is submitted that the petitioners became the landlords of the private respondents by virtue of sale deeds in their favour dated 23.11.1953 and status of the private respondents on the land in question as tenants has been reflected time and again in various orders. In this regard, he has referred to the order passed by the District Judge, Rohtak, dated 18.06.1970, in which it has been held that the private respondents would be entitled to remain in possession of the land in question as tenants and has also referred to the order of the Sub Judge 1st Class, Rohtak, dated 15.02.1972 by which objections filed by the petitioners were rejected and the possession of the land in question was delivered to the respondents as

tenants. It is also submitted that the private respondents have been held to be tenants even upto the Supreme Court but the only difficulty faced by the petitioners in this Court was on account of the previous order passed by the Supreme Court in the case of Jodha Ram vs. Financial Commissioner, Haryana, which is also reported as 1994 PLJ 74. It is further submitted that the private respondents cannot deny ownership of the petitioners once they have been held to be tenants on the land in question and their relationship of landlord and tenant is there in view of Section 116 of the Indian Evidence Act, 1872. He has also submitted that the land which was declared surplus on 28.06.1960 was challenged by the petitioner by way of an application filed under Section 8(1) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the "Act of 1972"). At that time, the private respondents had also filed an application under Section 15 of the Act of 1972 for the purpose of allotment of that surplus land to them being the sitting tenants. Both the applications were disposed of by the Sub Divisional Officer (Civil)-cum-Prescribed Authority by two different orders on the same day allowing the application filed under Section 8(1) of the Act of 1972 holding that since the land in question was purchased by the petitioners before 30.07.1958, therefore, it could not have been declared as surplus and accordingly, once the land could not have been declared surplus, therefore, the application filed by the private respondents under Section 15 of the Act of 1972 was directly become redundant and was, thus, dismissed. The order passed on the application filed under Section 8(1) of the Act of 1972 was not challenged at all but the private respondents filed a contempt petition before the Supreme Court against the order by which

application filed under Section 15 of the Act of 1972 was dismissed. The said contempt petition was, however, dismissed with the following order:-

“It is not disputed that an appeal is competent against the order of the Sub Divisional Officer, Sonipat. The petitioners were wrongly advised to approach this Court by way of contempt petition. Even if the limitation for filing the appeal is expired, the petitioners may file the appeal along with the application for condonation of delay. We have no doubt that the appellate authority shall consider the application for condonation of delay sympathetically. The contempt petitions are dismissed.”

The respondents, thereafter, filed the appeal only against the order by which their application under Section 15(1) of the Act of 1972 was declined. The said appeal was dismissed by the Collector on 26.07.1995 and that was the end of the matter.

Counsel for the petitioners has argued that once it has been held by the Competent Court that the land in dispute has wrongly been declared surplus and was exempted in terms of Section 8(1) of the Act of 1972 and the said order had become final, the private respondents cannot allege or argue that the said order was illegal or without jurisdiction. It is further submitted that even a void order is liable to be challenged within the period of limitation and in this regard, he has referred to two decisions of the Supreme Court in the cases of **State of Punjab and others vs. Gurdev Singh and Ashok Kumar**, 1991(3) S.C.T. 91 and **Sultan Sadik vs. Sanjay Raj Subha and Ors.**, 2004(1) R.C.R. (Civil) 767 and a Single Bench judgment of this Court in the case of **Moorti D/o Kaka Singh vs. Kaur Singh and others**, 2008(4) R.C.R. (Civil) 592, in which it has been held that even a void decree has to be challenged to wash it out.

In support of his submission that if the order is not challenged by way of further appeal, though available, then the private respondents cannot make it a ground of defence in the present proceedings, counsel for the petitioners has relied upon a judgment of the Supreme Court in the case of **Sri Gangai Vinayagar Temple and another vs. Meenakshi Ammal and others**, 2014(4) R.C.R. (Civil) 920.

Counsel for the petitioners has also submitted that since the private respondents were held to be the tenants and there is no evidence that they have paid the rent so far from the time they have entered into possession despite the directions of the Supreme Court and the order of the Financial Commissioner, determining the rate of rent, they are liable to be evicted from the land in question as according to him, even a single default is sufficient in this regard. In support of this submission, he has relied upon a judgment of the Supreme Court in the case of **Mrs. Raj Kanta vs. The Financial Commissioner, Punjab and another**, 1980 PLJ 346 and a decision of this Court in the case of **Swaran Dass vs. Financial Commissioner (Appeals-II), Punjab, Chandigarh & Ors.**, 2013(4) Law Herald (P&H) 3048 and another Division Bench judgment of this Court in the case of **Gian Chand vs. Financial Commissioner, Haryana**, 1999(3) RCR (Civil) 281.

On the other hand, Mr. Rana, learned senior counsel appearing on behalf of the private respondents, has vehemently argued that the private respondents are not liable to pay any rent to the petitioners as they are not the owners/landlords because the land in question had already been declared surplus in the year 1960 and the application filed by the petitioners under

Section 8(1) of the Act of 1972 after the appointed day, i.e. in the year 1973, is of no consequence. It is also submitted that since the private respondents were not a party to that order which was passed on the applications filed by the petitioners under Section 8(1) of the Act of 1972, the private respondents were not liable to challenge the same and, thus, the principle of *res judicata* would not apply in view of the proviso to Section 12(4) of the Act of 1972. It is further argued that even if the land was transferred by way of sale deeds by the big land owner before the cut off date, as prescribed under Section 8(1)(a) of the Act of 1972 i.e. 30.07.1958, the land has not been utilized and if the proceedings are not pending, then by virtue of operation of law, in terms of Section 12(3) of the Act of 1972, the land which has been declared surplus under the Act shall automatically vest in the State Government and as such, the petitioners would not be considered owners of the land in question and at the most, the owner of the land in question is the State Government. In support of his submission, he has relied upon a judgment of the Supreme Court in the case of **Amar Singh vs. Ajmer Singh**, 1994(3) PLR 433 and a Division Bench judgment of this Court in the case of **State of Haryana vs. Smt. Ram Kali etc.**, 2009(4) R.C.R. (Civil) 804.

In reply to his argument, Mr. Jain, learned senior counsel appearing on behalf of the petitioners, has submitted that the order passed under Section 8(1) of the Act of 1972 cannot be questioned by the private respondents being a party in these proceedings as the private respondents had an independent right to challenge those proceedings by way of statutory revision, as prescribed. It is also submitted that if the private respondents

had been aggrieved against the order which had been passed on his application filed under Section 15(1) of the Act of 1972 in which he had even gone to the Supreme Court, the order passed under Section 8(1) of the Act of 1972 could have also been challenged by them.

He has also referred to the reply of the State of Haryana in CWP No.6371 of 2000 in which it has been averred that *“the Prescribed Authority, Sonapat has already declared the land in question out of the Surplus Pool vide its order dated 23.02.1995 w.e.f. 24.1.1971. Parallel to it the tenants i.e., the respondents no.5 to 10 herein had moved an application for allotment of the land in question in their favour. That application was dismissed on dated 23.02.1995 and the appeal filed by the respondents no.5 to 10 i.e. tenants against the order dated 23.2.1995 was also dismissed by the Ld. Collector, Sonapat vide order dated 26.07.1995”*.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The resume of the aforesaid facts and the issues on law, both the learned counsel for the parties raised the following questions, which require adjudication by this Court:-

- (i) whether the private respondents are bound by the order of the Financial Commissioner dated 10.12.1998, dismissing their three revision petitions bearing RCR Nos.3, 4 & 6 of 1980-81, by which application filed by the petitioners for recovering rent have been allowed while upholding the relationship of landlord and tenant?
- (ii) Whether the private respondents are liable to be evicted

from the land in question for non-payment of rent even on account of a single default?

- (iii) Whether the order passed under Section 8(1) of the Act of 1972, which has not been challenged by the private respondents and also by the State of Haryana, has become final and cannot be re-agitated in the present petitions?
- (iv) Whether the transfer of land by the big land owner on 23.11.1953, before the cut off date i.e. 30.07.1958, will exclude the land from surplus pool in terms of Section 8(1)(a) of the Act of 1972 even if the surplus proceedings are not pending after the appointed day i.e. 24.01.1971?

Now I would decide all the four questions one by one.

Insofar as the first question is concerned, there is no dispute that the petitioners had filed the applications on Form-L on account of non-payment of rent by the private respondents to whom they had to deliver the possession as tenants on 17.01.1973 as ordered by the Executing Court. There is also no dispute that the petitioners are the owners of the land in question at least by virtue of the sale deeds in their favour dated 23.11.1953. The order was passed by the Financial Commissioner, dismissing all the three RCR Nos.3, 4 & 6 of 1980-81, upholding the fact that the private respondents were tenants under the petitioners and had not paid the rent to them. In this regard, in the absence of challenge to the said order at the instance of the private respondents, the judgment relied upon by the

petitioners in **Sri Gangai Vinayagar Temple's case (supra)** would apply as in that case there were suits and cross suits between the landlord and tenant and the landlord's suit was decreed and the tenant's cross-suit was dismissed but the tenant filed appeal only against the decree which was passed dismissing his cross suit and did not file the appeal against the decree which was in favour of the landlord, ordering ejectment of the tenant. In this regard, the Supreme Court has held that it would tantamount to *res judicata*. The observations of the Supreme Court, relevant for our purposes, are recorded as under:-

“We are of the opinion that having failed or neglected or concertedly avoided filing appeals against the decrees in O.S. 5/78 and O.S. 7/78 the cause of the Respondents/Tenants was permanently sealed and foreclosed since *res judicata* applied against them. We accordingly allow this Appeal but keeping the varying verdicts in view decline from making any order as to costs.”

Although learned counsel for the private respondents has argued vehemently on all aspects of the matter but no judgment to the contrary has been cited and, thus, the first question, which has been raised by the counsel for the petitioners, is answered in affirmative, holding that since the private respondents did not challenge the order passed by the Financial Commissioner upholding the recovery of rent from them, maintaining the relationship of landlord and tenant between them, the said order had attained finality against the private respondents and it cannot be agitated in the present writ petitions in defence.

Insofar as the second question is concerned, there is no evidence brought on record by the private respondents that they had ever

paid any rent to the petitioners from the date they had entered into possession, apparently on the premise that the petitioners are not the owners of the land in question as the land had already been declared surplus.

Be that as it may, since the private respondents have been held to be tenants and order has been passed by the Supreme Court after hearing both the parties directing them to pay the rent and further directed the Financial Commissioner to determine the rent, which was actually determined, but still nothing was paid by the private respondents, therefore, they are liable to be evicted from the land in question and in this regard, the contention of the counsel for the petitioners that a single default is sufficient to evict the tenant from the land in question is supported by the decisions in **Mrs. Raj Kanta's case (supra)**, **Swaran Dass's case (supra)** and **Gian Chand's case (supra)**.

Thus, the second question is decided accordingly, holding that if it is found as a matter of fact that the respondent-tenants, sitting over the land in question, have not paid the rent to the landlord even for once, the single default on their part would be sufficient for their ejection and they be ejected accordingly.

Now reverting to the third question, there is no dispute that the petitioners had purchased the land in question on 23.11.1953 and as it is provided under Section 8(1)(a) of the Act of 1972 that save in the case of land acquired by the Union Government or the State Government under any law for the time being in force or by a tenant under the Pepsu law or the Punjab law or by an heir by inheritance, no transfer or disposition of land in excess of (a) the permissible area under the Pepsu law or the Punjab law

CWP Nos.6368 to 6373 of 2000 (O&M)

[17]

after the 30th day of July, 1958, shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled but for such transfer or disposition. The land was declared surplus in the year 1960 and application was admittedly filed after the appointed day i.e. 24.01.1971. The said application was allowed vide order dated 23.02.1995, to which the private respondents may not be a party but the private respondents were there before the same authority pursuing their application filed under Section 15(1) of the Act of 1972 and had the knowledge of the proceedings which were being carried out on the application filed by the petitioners under Section 8(1) of the Act of 1972. Since that order was open to challenge before the Appellate Court under the relevant provisions of the statute, which remedy was not availed by the private respondents and they had challenged only the order by which their application filed under Section 15(1) of the Act of 1972 was dismissed, therefore, they cannot be allowed to agitate that the application filed by the petitioners under Section 8(1) of the Act of 1972 has been wrongly allowed by the official respondents and moreover, the appeal filed by the private respondents against the order passed on their application filed under Section 15(1) of the Act of 1972 was dismissed on the ground that since the application filed under Section 8(1) of the Act of 1972 has been allowed, therefore, the land cannot be allotted to them in terms of Section 15(1) of the Act of 1972 but still that order was not challenged by the private respondents. Consequently, this Court is of the view that if the order, which could have been challenged by the private respondents, is not assailed before the Competent Authority and attained finality in this regard, the

decision of the Supreme Court in **Gurdev Singh and Ashok Kumar's case (supra)** and the decision of this Court in **Moorti's case (supra)** comes handy as it has been held therein that even a void order cannot be ignored and has to be challenged in accordance with law and that too within the period of limitation.

Thus, the third question is also decided in favour of the petitioners and against the private respondents.

Insofar as the fourth question is concerned, although the judgment relied upon by learned counsel for the private respondents in **Amar Singh's case (supra)** and **State of Haryana's case (supra)** are correct on law but every case has to be decided on its own facts and since the private respondents did not challenge the order dated 23.02.1995, therefore, they cannot be allowed to raise this issue before this Court in the present case.

The fourth question is decided accordingly.

The net result of the aforesaid discussion leads to an irresistible conclusion that the writ petition filed by the petitioners are meritorious and hence, the same are allowed and the orders of the Financial Commissioner dated 10.12.1998 containing para 10 to the effect that *“as far the ejectment of the revision petitioner tenants from the land in dispute, the same cannot be allowed in view of the clear directions of the Hon'ble Supreme Court contained in their orders dated 11.10.93 (1994 PLJ 28). The 3 revision petitions relating to ejectment i.e. ROR Nos.67, 68 & 71 of 1980-81 are therefore accepted and the orders of the Collector dated 9.8.78 in the matter are set aside”* is hereby reversed in view of the fact that it has been

CWP Nos.6368 to 6373 of 2000 (O&M)

[19]

categorically clarified by the Supreme Court in its remand order dated 29.10.2009 that Section 9(1)(i) and Section 9(1)(ii) of the Act operate in different fields.

Accordingly CWP Nos.6373, 6370 and 6372 of 2000 are allowed and the private respondents are ordered to be evicted from the land in question.

As regards CWP Nos.6368, 6369 and 6371 of 2000 filed against the order passed in RCR Nos.3, 4 & 6 of 1980-81 are concerned, though the said revision petitions filed by the private respondents were dismissed but in these writ petitions, it has been held that the petitioners have not challenged the order dated 08.11.1982, which is the bone of contention in this matter as according to the petitioners, the private respondents were entered as tenants by virtue of the order of the Executing Court in 1973 and not from 08.11.1982 and there is no evidence on record even to remotely suggest that the private respondents have paid any rent from 1973 onwards. Consequently, all these three writ petitions are also allowed and the petitioners are held entitled to recover the rent from the private respondents of the land in question w.e.f. 1973 and not from 08.11.1982.

November 08, 2016
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No