Krishna Kumari & Anr vs State Of Haryana & Ors. on 27 November, 1998

Bench: M.K. Mukherjee, S.Saghir Ahmad

PETITIONER:
KRISHNA KUMARI & ANR.

Vs.

RESPONDENT:
STATE OF HARYANA & ORS. .

DATE OF JUDGMENT: 27/11/1998

BENCH:
M.K. MUKHERJEE, & S.SAGHIR AHMAD.,

JUDGMENT:

S. SAGHIR AHMAD

Section 10A of the Punjab Security of Land Tenures Act, 1953 provides that the State Govt. or any officer authorised by it may utilise any surplus area for the resettlement of tenants ejected or to be ejected under clause (1) of sub-section (1) of Section 9. The further implication of this Section is that if the surplus area, in the meantime, is acquired by the State Govt. under any law for the time being of force, or it passes to an heir by inheritance, the surplus area so acquired or inherited would not be available for utilisation. It was this statutory provision which was sought to be invoked by the appellants who contended that the surplus area, on the death of the original owner, namely Banarsi Das, was inherited by the and, therefore, it could not be utilised in any was, not even by allotment of this area in favour of Mangat Ram, which was liable to be cancelled, but they lost before all the authorities and have ultimately landed in this Court.

Leave granted.

Banarasi Das, father of the appellants, was the owner of considerable land in Village Kanthal Kalan, Dera Kalan, Dera Khurd, District Kurukshetra, Haryana. An area of 137 Kanals 8 Marlas of land was declared as surplus under the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the "Punjab Act"), which was later replaced by the Haryana Ceiling on Land Holdings Act, 1972

(hereinafter referred to as the "Haryana Act").

Banarsi Das died on 12th January, 1971 leaving behind Smt. Dropadi Devi (wife) and the present appellants (daughters), as his heirs, who inherited the property left by him. Since each of them got land which was less than 30 standard acres and since the land in question had not been utilised, they gave an application under Section 10A(b) of the Punjab Act, that their land may be taken out of the surplus pool. This application, which was filed before the Collector (Agrarian), Karnal, on 4.7.1972 was registered as Case No. 2441/Agr., which came ultimately to the court of S.D.O. (Civil), Karnal for decision, During the course of the proceedings, report of the Patwari, Teja Singh, dated 21.9.1972 and that of the Naib Tehsildar, Tarif Singh, of the same date, were placed on record which were to the effect that on the surplus lands of Banarsi Das, no tenant had been re-settled. Consequently, S.D.O. (Civil), by his order dated 30.11.1972, exempted the land held by the appellants and Smt. Dropadi Devi, who has since died, from the surplus pool.

On 16.12.1977, the appellants gave an application to the Collector for cancellation of the allotment order made in favour of Mangat Ram on 13.7.1976, which was registered as Case No. 54/Agr. Mangat Ram, it may be stated, is the father of respondent No.3. This case was decided on 13.6.1978 by the Collector (Agrarian), Karnal, and the allotment made in favour of Mangat Ram was cancelled on the ground that the land had not been utilised and had already been exempted from the surplus pool as indicated by the S.D.O. in his order dated 30.11.1972. Mangat Ram challenged the order in appeal before the Collector, Karnal, who, by his order dated 8.8.1983 allowed the appeal and remanded the case to Collector (Agrarian) for a fresh decision. Aggrieved by this order, the present appellants filed an appeal before the Commissioner, Ambala Division, who, by his order dated 26.9.1984 dismissed the appeal. The appellants then filed a Revision before the Financial Commissioner, but the Revision was dismissed on 28.2.1990.

The proceedings remanded to Collector, Karnal were ultimately decided by him on 17.8.1992. The application of the present appellants for releasing the land from the surplus pool was rejected and the allotment order passed in favour of Mangat Ram was upheld. It was found by the Collector that an area of 40 Kanals 16 Marlas had already been allotted to Mangat Ram on 21.2.1964 and possession over the allotted land was also delivered to him on 17.3.1964. It was found that since the surplus land had already been utilised before the death of Bansarsi Das, there was no occasion to cancel the allotment made in favour of Mangat Ram in 1964. This judgment was challenged by the appellants in an appeal filed before the Commissioner, Ambala Division but the appeal was dismissed on 20.1.1993. The Revision filed, thereafter, before the Financial Commissioner, Haryana was dismissed on 21.1.1997. The appellants then agitated the matter in a Writ Petition before the Punjab & Haryana High Court which, by the impugned judgment, dismissed the Writ Petition on 14.8.1997.

Shri Rajinder Sachar, Senior Counsel, appearing for the appellants, has contended that there was no utilisation of surplus land under the Punjab Act till the death of Banarsi Das on 12.1.1971 and, therefore, the land, in question, was inherited by the appellants along with their mother Smt. Dropadi Devi who being the small farmers were entitled to an exemption of their land from the surplus pool. It is also contended that since the provisions contained in the Punjab Act and the

Rules framed thereunder with regard to the utilisation of surplus area were not complied with, the land in question shall not be deemed to have been utilised. The land, after the death of Bansarsi Das, was inherited by the appellants and since inheritance is saved under Section 10-A(b) of the Punjab Act, the area which constituted the land of the appellants was liable to be excluded from surplus area or there has to be re-determination of surplus area under the Haryana Act as succession had opened on 12.1.1971 on the death of Banarsi Das, that is, ten days before 24.1.1971, which is the relevant date under that Act and the land devolved upon them by inheritance.

Learned counsel for the respondents, on the contrary, has contended that after the land was declared surplus, it was fully utilised by an allotment made in favour of Mangat Ram to whom possession was also delivered in 1964. Mangat Ram remained in possession over the area in question throughout his life by personally cultivating the land and after his death. respondents No.3 has been in possession as has also been found by all the authorities below. It is contended that the findings recorded by the Collector, karnal as also by the Commissioner. Ambala Division and the Financial Commissioner, to the effect that the land was allotted to Mangat Ram in 1964 and possession was also delivered to him on 17.3.1964. are findings of fact which cannot be questioned in these proceedings particularly as the High Court had summarily dismissed the Writ Petition on this very ground, namely, that the findings, which were questioned before it, were findings of fact.

Section 10-A and 10-B of the Punjab Act provide as under:-

> "10-A. (a) The State Government or any officer empowered by it in this behalf, shall be competent to utilize any surplus area for the resettlement of tenants ejected. or to be ejected, under clause (i) of sub-section (1) of section 9.
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> (b) Notwithstanding anything contained in any other law for the time being in force and 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 no transfer or other disposition of land which is comprised in surplus area at the commencement of this Act. shall affect the utilization thereof in clause (a).

Explanation - Such utilization of any surrplus area will not affect the right of the land-owner to receive rent from the tenant so settled.

(c) For the purposes of determining the surplus area of any person under this section, any judgment, decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored.

10-B. Saving by inheritance not to apply after utilization of surplus area. - 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 utilised.

While Sub-clause (a) of Section 10-A authorises the State Government or any officer empowered by it in that behalf to utilise any surplus area for the resettlement of tenants ejected, or to be ejected, under Section 9(1)(i) of the Act, Clause (b) creates an exemption in favour of land which, in the meantime, is inherited by the heirs on the death of the land owner. The land so inherited cannot be utilised. But if the land has already been utilised, then the exemption will not be available to the heirs as provided by Section 10-B. Part IV of the Rules made under the Punjab Act deals with the resettlement of tenants ejected or liable to ejectment. Rule 13 indicates the procedure for dispossession of tenants liable to ejectment under Section 9(1)(i). Rule 14 provides for resettlement of tenant on the application of the landowner. Rule 15 provides for resettlement on the application of the tenants. Suo motu proceeding for resettlement of tenant can be initiated by the circle Revenue Officer under Rule 16. Rule 17 indicates the procedure which is to be followed by the Circle Revenue Officer while Rule 18 provides for the procedure for allotment of land. Rules 20-A, 20-B, 20-C and 20-D, which are relevant for purposes of the present case, provide as under:-

> "20-A. Issue of certificates. - Every tenant shall be given a certificate in Form K-6 describing clearly the land allotted to him. A copy each of the certificate shall be sent landowner on whose land the tenant is to be resettled, and another copy shall be retained on the file for record.
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> 20-B. Delivery of possession. - (1) After orders of allotment of any surplus area have been passed the Circle revenue Officer, shall move the Collector for passing necessary orders directing the landowner or the tenant, as the case may be to deliver possession of the land in his surplus area to the Circle Revenue Officer, who shall be deemed to be an officer empowered by the Government, under section 19-C, for the purpose of delivery of possession.
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> (2) 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. The possession of the land shall be delivered to the tenant by the Circle Revenue Officer himself.
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> (3) The possession of the land on which a tenant is resettled shall ordinarily be given after the crops are cut. If, however, the Circle Revenue Officer deems it necessary to deliver possession of the land to any tenant before the crops are cut a statement showing the crop and the area under the same shall be prepared by the Patwari before the possession is taken by the tenant. A copy of the statement shall be furnished to the landowner as well as to the tenant.

20-C. Conditions of resettlement. - The tenant who is resettled under this part-

(a) shall be tenant of the landowner in whose name the land in question stands in the revenue records;

(b) shall be liable to pay the same amount of rent as is customary in that estate for such land subject to the maximum fixed under section 12 of the Act; and

(c) shall in respect of the land upon which he is resettled execute a Qabuliyatt or a Patta as given in Annexure 'C' appended to the Punjab Security of Land Tenures Rules, 1953, in favour of the landowner before he is put in possession of the land.

20-D. Consequences of not taking possession. - In case, a tenant does not take possession of surplus area allotted to him, for resettlement within the period specified in sub-rule (1) of rule 20-B, thee allotment shall be liable to be cancelled and the area allotted to such tenant may be utilized for resettlement of another tenant.

The statutory provisions quoted above indicate that the surplus land has to be allotted to a tenant already ejected or likely to be ejected for resettlement. After allotment of the surplus area to a tenant, a Certificate in Form K-6, describing clearly the land allotted to him, is issued, copies whereof are sent to the Patwari concerned as also the landowner on whose land the tenant is to be resettled. Thereafter, possession of the allotted area is delivered to the tenant who is bound to take possession within a period of two months of the date on which demarcation of the land is made at the site in his presence or within such extended period as may be allowed by the Circle Revenue Officer. Once a tenant has been resettled, he becomes the tenant of the landowner and becomes liable to pay rent to that owner, Rule 20-C(c) further requires that the tenant so resettled, shall execute a Kabuliyat or a Patta on the Proforma given in Annexure 'C' appended to the Rules in favour of the landowner. But the execution of Kabuliyat or Patta has to be done before the tenant is put in possession of the land. Resettlement has to take place in the manner indicated in the above provisions. Once the process is completed, the surplus land shall be treated to have been utilised within the meaning of Section 10-A(a) of the Punjab Act.

In Financial Commissioner, Haryana State and other vs. Smt. Kela Devi and another, (1980) 1 SCC 77 = AIR 1980 SC 309 = 1980 (1) SCR 1120, it was indicated by this court as under:-

> "..... Rule 20-C provides, inter alia, for the execution of a "qabuliyat" or "patta" by a resettled tenant. It would thus appear that while allotment of land is an initial stage in the process of utilisation of the "surplus area", it does not complete that process as it is necessary for the allottee to obtain a certificate of allotment, take possession of the land within the period specified for the purpose, and to execute a "qabuliyat" or "patta" in respect thereof. The process of utilisation contemplated by Section 10-A of the Act is therefore complete, in respect of any "surplus area" , only when possession thereof has been taken by the allottee or the allottees and the other formalities have been completed, and there is no force in the argument that a mere order of allotment has the effect of completing that process."

The Court further observed as under:-

> "..... Rule 20-D of the Rules..... provides that in case a tenant does not take possession of the "surplus area" allotted to him for resettlement within the period specified therefor, the allotment shall be liable to be cancelled and the area allotted to him may be utilised for the resettlement of another tenant. It cannot therefore be doubted that a completed title does not pass to the allottee on a mere order of allotment, and that order is defeasible if the other conditions prescribed by law are not fulfilled."

This decision was considered by a Constitution Bench in Ujjagar Singh (dead) by L.Rs. vs. The Collector, Bhatinda & Anr., (1996) 5 SCC 14 = AIR 1996 SC 2623 = JT 1996 (6) S.C. 713, and was approved. The Constitution Bench also considered a Full Bench decision of the Punjab and Haryana High Court in Ranjit Ram vs. The Financial Commissioner, Revenue, Punjab & Ors. (1981) 83 P.L.R. 492, and observeed as under:-

> "According to us, the majority judgment of the Full Bench, has correctly appreciated the scope of the three enact-ments referred to above, Once the lands declared as surplus under the Pepsu Act did not vest in the State Government, as possession thereof had not been taken, there has to be a fresh determination in respect of the area which the appellant is entitled to hold in the light of the Punjab Act."

Relying upon the above statutory provisions specially the decision of this court in Financial Commissioner, Haryana State and others vs. Smt. kela Devi and another (supra) and the Constitution Bench decision in Ujjagar Singh (dead) by L.Rs. vs. The Collector, Bhatinda & Anr. (supra) which approved the earlier decision in Financial Commissioner, Haryana State and others vs. Smt. Kela Devi (supra), it is contended by Mr. Rajinder Sachar that in the instant case, the process of utilisation did not move beyond the stage of allotment in favour of Mangat Ram and, therefore, the land shall not be treated to have been utilised as neither possession was taken over by him nor did he execute any Kabuliyat in favour of Banarsi Das till the time of latter's death on 12.1.1971. On that date, succession to Banarsi Das opened and the land came to be inherited by the appellants as also their mother who has since died. It is also contended that the Haryana Act, under which the relevant date is 24th of January, 1971, would not affect the rights of the appellants as they had already inherited the surplus land before the relevant date and consequently their application for cancellation of the allotment, made in favour of Mangat Ram, was liable to be allowed.

Whether all the steps indicated in the Rules, referred to above for utilisation of land, were observed and followed or not, is a question which has been considered by all the authorities before whom the matter was agitated and they have concurrently held against the appellants and have recorded the finding that possession of the land allotted to Mangat Ram was delivered to him. We would normally have not entered, in the present proceedings under Article 136 of the Constitution, into those questions of fact, but Mr. Sachar has Vehemently contended that all the steps for utilisation of surplus land were not taken, specially possession thereof was not delivered to Mangat Ram and, therefore, the mandatory requirements indicated in the Act and the rules were violated which has impelled us to scrutinise the findings in the light of the arguments raised before us as also the material brought on record through various affidavits by the parties in this case.

Collector, Agrarian, Thanesar, Distt. Kurukshetra, in his judgment dated 17.8.1992 has recorded the following findings:-

> "Allotment made in favour of Mangat Ram has been admitted by the petitioners themselves in their application dated 16.12.77 and in this application they have made a request to the collector, Agrarian, Karnal that the allotment may be cancelled and possession may be delivered back to them. When the petitioner themselves admit the possession of Mangat Ram so this land cannot be said to be unutilised. I am in agreement with the contention of the counsel for the respondent Ram Dia, legal heir of Mangar Ram. Land was allotted to Mangat Ram on 21.2.64 and the possession had been delivered vide report rozmancha no. 219 dated 17.3.64 which has been admitted by the petitioners themselves in their application and all the Courts have admitted this as such. Therefore, the land stood utilised at the time of death of big land owner and for the reason this case does not fall within the ambit of Section 10 A(b) of Punjab Security of Tenures Act. So far as thee question of report of Teja Singh Patwari and that of Naib Tehsildar Agrarian dated 21st September, 1972 is concerned, in which they have said that the land was not utilised, it is found from the record that on the basis of the facts aforequoted, the lands stands utilised. The report has no basis nor this report is on the basis of record.
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> The counsel for the petitioners contend that the report rozmancha no. 219 dated 17.3.64 has been fabricated because two kinds of papers are used in it and page no.29 is not pasted on its serial. Roznamcha has been fabricated afterwards.
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> In this respect the counsel for the respondents while arguing has submitted that the report roznamcha has been properly prepared. Reference of this report has been made by Collector, Agrarian, Karnal in his order dated 13th June, 1978, Collector Agrarian, Karnal in his order dated 27th October, 1982, Collector Karnal is his order dated, 8th August, 1983 and by the Financial Commissioner, Haryana in his order dated 28.2.1990 but the petitioners never expressed any doubt as to this report roznamcha nor raised any objection ever although this document is important one in this case. Now describing this report roznamcha as wrong is not justified. In addition to this the Expert who has been produced with regard to this report roznamcha, he does not know how to write and read Urdu. Then how can he express his opinion about this document? The Collector, Karnal has also written in his order dated 8th August, 1983 to the effect "that it is an admitted fact that Mangat Ram son of Kalu Ram was allotted 40 Kanals 16 marlas of land on 21.2.1964 as 'B' category tenant possession whereof was given vide report no 219 dated 17.3.1964. Appellants were issued from US-3 on 9th September, 1976. The petitioners also have admitted the possession of Mangat Ram in their application dated 16.12.1977 from where it is proved that possession was delivered to Mangat Ram vide report roznamcha No. 219 dated 17.3.1964."

Regarding From K-6, the finding is to the following effect:-

"Counsel for the petitioners has also raised an objection that there is no Form K-6 on the file whereas one copy of Form K-6 is given to the land owner as per Section 20 of the Punjab Security of Land Tenures Act and one copy is given to the allottee and one copy is retained on the file but Form K-6 has never been issued.

Counsel for the respondents has drawn my attention to index form of file No. 332/Anti Agr. In this form reference to Form K-6 is made. He submitted that the petitioners have deliberately got removed this form because by showing this missing they want to take benefit. I am in agreemtn with the contention for the counsel for the respondents. In the index form in file No. 332/Anti Ar., Form K-6 has been referred to which is prepared in Urdu and this file was consigned to the record room vide Goshwara No. 1388. If Form K-6 was not there at the time of consigning this file in the record room, then it was not possible to assign Goshwara on this file. In addition to this report no. 219 dated 17.3.64 makes a reference to Form K-6. Therefore, this argument is not acceptable though in this case From K-6 has not been issued or that other formalities having been completed, rather the land had been allotted as per the rules. Possession was given to the allottee on 21.3.1964, Form K-6 was issued, vide form US-3 the proprietory rights were conferred on the allottee. So far as writing of Kabuliatnama is concerned, in this respect also the arguments of counsel for respondents is justifiable that it is the duty of the big land owner to get executed the Kabuliatnama but the big land owner had made on efforts in this respect.

Therefore, from all the facts above noted, it is clear that 40 Kanals 16 marlas area of big land owner Banarsi Das was allotted on 21.2.1964 to Sh. Mangat Ram son of Kalu Ram, possession whereof had been given to Mangat Ram and until today this area is under cultivation of Ram Dia, legal heir of Mangat Ram, whose name appears in jamabandi and Girdawari. The petitioners themselves admitted possession of Mangat Ram at the spot in their application dated 16.12.1977 and had made a prayer before the Collector that allotment may be cancelled and possession may be delivered back to them. Instalments of surplus land have also been deposited. After the possession was delivered to Mangat Ram, big land owner Banarsi Das died on 12.1.1971 i.e. the land stood utilised before the death of big land owner. From US-3 has been issued to the allottee and proprietary rights has been conferred on him.

The Commissioner, Ambala Division, in his judgment dated 20.1.1993, has recorded the following findings:-

"As regards the allotment factum, it is proved from the allotment file No. 332 that this land was allotted to the respondent's father Mangat Ram. This fact was also admitted by the appellants in 1972 and 1977 when they requested the Collector Agrarian to cancel the allotment. The respondent's counsel however, did not have any convincing reply to the insertion of page in the Roznamcha bearing the Rapat No. 219. The appellant's counsel has tried to prove this forgery with the help of

handwriting expert as well. Nevertheless, it cannot be assumed that any forgery or fabrication was done by the respondent side. It was an old record of 1964 and only the revenue officials of that time could best prove the fact genuineness or forgery in this regard. The respondent being a tenant and illiterate person cannot be exempted of doing any forgery or fabrication of records. The appellants never raised these pleas earlier at the time of seeking exemption and cancellation of the allotment. It, therefore, appears that it is an after-though story to take benefit some technical ommissions in the procedures. In my opinion the allotment is well established in favour of the respondent.

As regards the factum of utilisation the Id. counsel for the appellants relied on the provisions contained in rule 20-A to 20-C and the judgments cited in his arguments. the basic point on which he relied was that the requirement of rule 20-A to 20-C were not fulfilled and therefore, there was no utilisation in the eye of law and if the land was not utilised during the life time of the big land owner, then his legal heirs were entitled to benefit of section 10-A (b) of the Act. The Id. counsel basically relied on the judgment of the Hon'ble Supreme Court of India reported in 1980 PLJ page 121 in case F.C. Haryana versus Smt. Kela Devi and others. On going through the details of this case, it is revealed that this verdict related to that piece of land of which possession was not admittedly given to the tenants/allottee. In this case the Commissioner and the F.C. had taken a view that the order of allotment of the surplus area itself amounted to utilisation of that land u/s 10A(a). In this case an area of 8 Kanals in village Ghelab was not allotted to any tenant though it was in the surplus pool and the possession of this land was also not given to any-one. This verdict basically pertains to this piece of land. The Hon'ble Court had observed in their judgment itself, that the controversy before them does not relate to those pieces of land which had been allotted to various tenants and possession was given to them. In the instant case the factum of allotment and possession was earlier admitted by the appellants and therefore, this ruling is not applicable in this case. The case law referred to in PLJ 1989 page 95, PLJ 1991 page 180, 1982 PLJ 171, 1992 PLJ page 71 and 160 and 1981 PLJ 21 are relevant in cases where the possession was not delivered to the allottees. In the instant case the possession of the respondent is proved from the revenue record since 1965. As regards the issuance of certificate in form K-6, the same does not exist on the file as the pages from 33 to 38 of the allotment file are missing which might have contained the form K-6. It would be, therefore, improper to assume that Form K-6 was never issued to the tenants."

The Financial Commissioner, in his Judgment dated 21st of January, 1997 recorded the following findings:-

10. The case of the petitioners is that even though the surplus area case of their father was decided in April, 1961 and some land was declared surplus, yet the same had not been utilized till the time of the death of their father in 1971.

Therefore, under Section 10(A)(b) of the Punjab Security of Land Tenures Act, 1953, they were entitled to get exemption from the land being declared surplus as the successors of the big land owner were small land-owners. The present petitioners have quite laboriously harped on this issue that the allotment of the surplus land in favour of Sh. Mangat Ram was fake and forgery was done in various documents to show that possession of the land had been given to Sh. Mangat Ram.

11. Even though he succeeded in creating some doubts about the genuineness of certain documents about the delivery of possession, yet his arguments lose force because:-

> i) According to his own statement contained in application dated 16.12.1977 made before the collector (Agrarian) Karnal, 42 Kanal 14 marla of land out of surplus pool of Banarsi Das, was allotted to Sh. Mangat Ram father of respondent No.2 in 1964 and US-3 Form of the land was issued on 9.9.76 while by that time land stood exempted from the surplus pool, vide Collector order dated 13.11.72. The prayer was that allotment be cancelled and possession given to them. This shows that the present petitioners were aware in 1972 when they applied on the death of their father for exemption of land from the surplus pool that the land declared surplus had already been allotted to some persons. If this fact had been disclosed, the Collector (Agrarian) Karnal would not have exempted the land from surplus pool without giving notice to the allottees of the land.

ii) In their application dated 16.12.77 the present petitioners were requesting the Collector (Agrarian) Karnal to cancel the said allotment made in 1964 and restore the possession to them. This shows that the present petitioners were admitting the fact that the possession of land had already been given to the respondents. Their contention is that if possession had actually been given to the respondents on 17.3.64 as mentioned in Rapt Roznamcha No. 219, the same should have been reflected in Girdawari of Rabi 1964 or Kharif 1964. Revenue record has been produced to show that the respondents were in possession of the land since 1965. Absence of Girdwari in favour of the respondents for Rabi 1964 or Kharif 1964 cannot be taken to mean that the delivery of possession was fake.

iii) The plea that entire allotment proceedings of surplus land in favour of Sh. Mangat Ram was fake, was never raised by the present petitioners at an earlier stage particularly when they went to Collector (Agrarian) Karnal in December, 1977 for cancellation of allotment of surplus land in favour os Sh. Mangat Ram and restoration of possession back from him.

12. After going through the arguments of the Counsels and perusing the record of the case it becomes apparent that the land of Shri Banarsi Dass declared surplus in April, 1961 had been allotted and possession given to the allottees. It is possible that in the process of allotment and utilisation of surplus land some of the technicalities like execution of Kabuliat Nama or delivery of possession within 2 months of the date of allotment may not have been fully comlied with. But these are mere technicalities and a poor tenant cannot be deprived of his right to allotment of surplus land merely because some of these technicalities about delivery of possession and utilization of land had not been complied with. In this connection the rulings quoted by the counsel for the respondents

namely :

> 1990 PLJ-485 and 1991 PLJ-714, are quite relevant."
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> From the aforesaid findings, it would be seen that the land in question was, admittedly, allotted to Mangat Ram in 1964. Possession was also delivered to him over that land. Form K-6 is indicated to have been issued in the report relating to delivery of possession. Form K-6 is also indicated in the index of the relevant file. The index is prepared in the course of official business and every document which is placed on the record is first indexed. If the document is not on the record, it would not mean that it was never filed. Form K-6 was issued as far back as in 1964. Since it has been mentioned in the report for delivery of possession and is also mentioned in the index, its non-availability on the file would be of no consequence and it would be treated to have been issued at the relevant time in terms of the requirement contained in the Rules.
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> Mr. Sachar drew our attention to the following findings recorded by the Commissioner, Ambala Division in his Judgment dated 20th of January, 1993:-
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> "Regarding the execution of Kabuliatnama Under rule 20-C. the respondent counsel has relied upon 1990 PLJ 485 and 1991 PLJ 714 which lay down that after delivery of possession execution of Kabuliatnama or Patta Nama is mere technicality and the utilisation cannot be assailed on this ground when the other conditions are complete. I find these two rulings quite relevant to the instant case."

as also the following observations made by the Financial Commissioner, Haryana, in his judgment dated 21.1.1997:-

> "It is possible that in the process of allotment and utilisation of surplus land some of the technicalities like execution of Kabuliat Nama or delivery of possession within 2 months of the date or allotment may not have been fully comlied with. But these are mere technicalities and a poor tenant cannot be deprived of his right to allotment of surplus land merely because some of these technicalities about delivery of possession and utilization of land had not been complied with.
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> and contended that these findings are wholly contrary to law laid down by this Court in Financial Commissioner's case (supra) and, therefore, cannot be sustained in law. He contended that if "Kabuliyat" was not executed by Mangat Ram in favour of Banarasi Das at the time of delivery of possession, one of the steps for utilisation of surplus land, indicated in Rule 20-C was not followed and, therefore, the land could not be treated to have been utilised prior to the death of Banarsi Das in 1971. It is contended that the requirements indicated in Rule 20-C are mandatory in nature and, therefore, they had to be followed.

If "Kabuliyat" was not executed, the land, it is contended, cannot be treated to have been utilised. We are not prepared to accept this contention.

Undoubtedly, all the requirements indicated in Rule 20-C are mandatory in character and, therefore, clause (c) of Rule 20-C will also be mandatory for the reason that the first part of this clause contains in imperative terms that the tenant shall execute a "Kabuliyat" or "Patta" in favour of the land-owner and the second part which is equally imperative says that it shall be done before possession is delivered to the tenant. It is obvious that if the second mandatory step was taken and the possession over the land was delivered by the Revenue Circle Officer himself as required by Rule 20-B, there is no reason to believe that the first mandatory step, immediately preceding thee second step, was not taken particularly as possession would not have been delivered to Mangat Ram without execution of "Kabuliyat". In fact, delivery of possession being the official act of the Revenue Circle Officer as indicated in Rule 20-B, a presumption has to be raised that all antecedent formalities were duly complied with.

There is another reason for not accepting this argument of the the learned counsel for the appellants. It is indicated in Section 9(1)(vi) that if the tenant does not execute the "Kabuliyat" in favour of the land-owner, he would be liable to be ejected. Form of "Kabuliyat" is specified in Annexure 'C' appended to the Punjab Security of Land Tenures Rules, 1953. It is in the form of a statement made by the tenant that he has taken the land belonging to "X" for cultivation to whom he would pay the rent per agriculture year regularly in time. The tenant also gives the undertaking that he would not :

> i) fail, without sufficient cause, to cultivate the land comprised in my tenancy, in the manner or to the extent customary in the locality in which the land is situate;
>
> ii) use the land comprised in my tenancy in a manner which may render it unfit for the purpose for which hold it; and
>
> iii) sublet the tenancy or a part thereof.

Note given at the foot of the Form of Kabuliyat reads as under:-

> "Note:- This Kabuliyat or patta should be executed by the tenants in duplicate, who will give, one copy to the land-owner concerned and retain the other:-
>
> "Kabuliyat" is a document which is executed in favour of land-owner and on being executed, is given to the landowner. The landowner, therefore, has to have it in his possession. Surprisingly, there is no averment in the Writ Petition or anywhere else that "Kabuliyat" was not executed in favour of Banarsi Das. Moreover, had Mangat Ram not executed the Kabuliyat or Patta in favour of Banarsi Das, he would have been, by now, evicted from the land in question in view of the provisions contained in Section 9(1)(vii) of the Punjab Act. He would not have allowed to continue in possession from 1964 till this date or at least till the death of Banarsi Das in 1971

without any proceedings being initiated for his eviction. Since Mangat Ram was in possession throughout, he shall be treated to have had a valid title to remain in possession which can be traced to the allotment of land followed by delivery of possession after completion of all other formalities including execution of "Kabuliyat" or Patta.

It was next contended on behalf of the appellants that "Kabuliyat" is not on record and, therefore, it must be held that it was not executed by Mangat Ram when the land was allotted to him. This argument cannot be accepted in view of the findings recorded by the authorities below who had also considered the effect of the so-called forged document, that possession of the land was delivered to Mangat Ram in 1964 and that he has been in continuous possession since then. We cannot, merely because the "Kabuliyat" is not on record, hold that the Kabuliyat or Patta was not executed by Mangat Ram. Moreover, "Kabuliyat"

is executed in duplicate. The original is handed over to the land-owner while the copy is retained by the tenant. There is no requirement under the Act or the Rules that a copy of "Kabuliyat" shall also be placed on record.

Learned counsel for the appellants also assailed the findings of the Commissioner, Ambala Division and those recorded by the Financial Commissioner that there was an admission of the appellants in their application for cancellation of allotment made in favour of Mangat Ram that possession over surplus land was delivered to him. It was pointed out that the application contains a recital that if possession is found to have been delivered to Mangat Ram, the same may be restored to the appellants. This, it is alternative which can be legally made.

The averment contained in the application may not, in the strict sense, be treated as "admission" of the appellants, but their pleadings do exhibit a hesitant mind in as much as Mangat Ram, to their knowledge, was in possession over the land since 1964 and continued to remain in possession uninterruptedly as a tenant, but they circumventively, as artificers, say in their application that IF possession was found with Mangat Ram, the same may be restored to them. The use of the word "IF" is a deliberate contrivance so as to make the admission conditional. Even if this is excluded from consideration, the findings on the question of possession can still be sustained on the basis of other evidence on record.

No other plea was raised before us. For the reasons stated above, we find no merits in the appeal which is dismissed but without any order as to costs.