Sahib Ram Etc vs The Financial Commissioner, Punjab & ... on 24 February, 1970

Equivalent citations: 1971 AIR 198, 1970 SCR (3) 796, AIR 1971 SUPREME COURT 198

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, J.M. Shelat

PETITIONER:
SAHIB RAM ETC.

Vs.

RESPONDENT:
THE FINANCIAL COMMISSIONER, PUNJAB & OTHERS

DATE OF JUDGMENT:
24/02/1970

BENCH:
VAIDYIALINGAM, C.A.
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VAIDYIALINGAM, C.A.
SHELAT, J.M.

CITATION:
1971 AIR 198 1970 SCR (3) 796
1970 SCC (1) 524
CITATOR INFO :
D 1974 SC 994 (26,70,72,73,91,113,117)

ACT:
Punjab Security of Land Tenures Act 10 of 1953, Section 18(1), sub ss. (i) & (ii)-Scope of-Whether to claim right of purchase tenant should have been in continuous occupation of land for 6 years before Act came into force.

HEADNOTE:
The question that arose for decision in these writ petitions and civil appeals was whether a tenant, in order to claim the right of purchase as against the land-owner, under s. 18(1) of the Punjab Security of Land Tenures Act X of 1953 should have been in continuous occupation of the land comprised in his tenancy for a minimum period of six years

on the date when the Act came into force (April 15, 1953), or on the date when he files the application for purchase to the concerned authority under the Act. A subsidiary point for consideration was whether the person who claims the right to purchase, should have been a tenant on the date when the Act came into force.

HELD : In order to claim a right of purchase as against the land owner s. 18(1)(i) of the Act, the minimum period of six years should have been completed at the time when the application for purchase by the tenant is made, and it is not necessary that he should have been a tenant of the land on April 15, 1953. Provided the other conditions are satisfied such a tenant will be entitled to purchase the land. [808 G]

Section 18(1)(i) gives a right to a tenant to purchase the land; and that right has to be examined when an application under s. 18 is made and cannot be denied on the ground that he was not a tenant for more than six years on April 15, 1953. There is no limitation placed under cl. (i) of s. 18(1) that the tenant who exercises his right should be a tenant on the date of the Act or that he should have completed the period of six years on April 15, 1953 and there is no warrant for reading in s. 18(1)(i) clauses which it does not contain. It is enough if the continuous period of six years has been completed on the date when the tenant files the application for purchase of land, [808 C]

When the object of the Act as seen from clause (ii) of section 18(1) is to attract even a tenant who-got back into possession of the land after the date of Act, there is no reason why a limitation should be read into clause (i) in respect of a tenant who is in possession of the land that he should have completed the period of six years continuous occupation even prior to the date of the Act.

Clause (iii) dealing with the third category of tenants, admittedly relates to a tenant evicted from the property even before the date of the Act and who was not in possession on the day when the Act came into force. But, nevertheless, if such tenants had been in continuous possession for six years at the time of their ejectment which must be before the date of the Act, they are entitled to purchase the property but that right must be exercised within a period of one year from the date of the commencement of the Act. [807 B]

It stands to reason that the tenants coming under clause (i) and (ii) who are in actual possession of the land have been given the option

797

either to continue as tenants and pay rent or to exercise their right to purchase the land at any time. There is no question in their case of there being any time-lagor doubt because,, being in possession no other person's right wilt normally be affected; whereas in the case of a tenant coming under clause (iii), he has already gone out of the land and

therefore the Legislature has specifically provided a very short period of one year from the date of the Act for exercising, if he so chooses, his right to purchase the land provided he satisfies the other conditions mentioned in the section. [807 F-H]

Ganpat v. Jagmal, (1963) Punj. L.R. 652; Amar Singh v. State of Punjab, I.L.R. [1967] 2 Punj. & Har. 120; Mam Raj v. State of Punjab, I.L.R. [1969] 2 Punj. & Har. 680; distinguished.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 116 and 190 to 214 of 1968.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights; and Civil Appeals Nos. 2356 and 2357 of 1966 and 1508 to 1514 and 1471 of 1968.

Appeals from the judgment and order dated October 1, 1963 of the Punjab High Court in Civil Writ Nos. 715 of 1963 etc. S. K. Mehta, K. L. Mehta and Sona Bhatiani, for the petitioners (in all the petitioners) and the appellants (in C.As. Nos. 1508 to 1514 of 1968).

E. C. Agarwal, for respondents Nos. 5 and 6 (in W.P. No. 116 of 1968) and respondent no. 5 (in W.P. Nos. 191 and 209 of 1968 and C.As. Nos. 1508 to 1514 and 1471 of 1968). The Judgment of the Court was -delivered by Vaidialingam, J. The common question that arises for consideration in all these writ petitions filed under Art. 32 and the civil appeals, on certificates granted by the High Court, is whether a tenant, in order to claim the right of purchase as against the landowner, under s. 18(1) of the Punjab Security of Land Tenures Act, 1953 (Act X of 1953) (hereinafter referred to as the Act), should have been in continuous occupations of the land comprised in his tenancy for a minimum period of six years, on the date when the Act came into, force (April 15, 1953), or on the date when he files the application for purchase to the concerned authority under the Act. A subsidiary point also arises for consideration viz., whether the person who claims the right to purchase, should have been a tenant on the date when the Act came into force.

The circumstances under which these writ petitions and appeals arose, may be briefly stated.

We shall first take up for consideration Civil Appeal No. 2356 of 1966.

Respondents 2 and 3, who are the tenants under the appellant land-owner, in this appeal, filed on January 10, 1961 before the Assistant Collector, I Grade, Fazilka, an application under S. 18(1) of the Act for purchase from their land-lord 19 acres and 7 kanals of land comprised in their tenancy. Their case was that they had been in continuous occupation of the land comprised in their tenancy for a minimum period of six years and, as such, they were entitled to purchase the land. Their claim was resisted by the appellant land- owners on the ground that it was only those tenants who had completed a continuous period of six years of tenancy prior to the commencement of the Act who

were entitled to purchase the land under S. 18(1) of the Act and as the applicants did not satisfy that test, the application was not maintainable. The Assistant Collector, by his order dated March 29, 1961 over-ruled the objections of the land-owners and held that the application filed by the tenants was maintainable as similar purchase applications had been entertained without regard to -any date of completion of six years of continuous tenancy and in this view the matter was directed to be posted for further hearing. The appellants challenged this order of the Assistant Collector by an appeal taken before the Collector, Ferozepore. The Collector, by order dated June 9, 1961 reversed the order of the Assistant Collector and held that no tenant who had not been in continuous possession for six years on the commencement of the Act could apply, under s.18(1) of the Act, for purchasing the property and that the six year period should have been completed at the time the Act came into force. In this view he held that the application filed by the tenants was not maintainable.

The tenants carried the matter in appeal before the Additional Commissioner, Jullundur Division, who, by his order dated December 14, 1962 agreed with the Collector and dismissed the appeal. The tenants went in revision before the Financial Commissioner, Revenue Punjab, who, by his order dated April 24, 1963 reversed the orders of the Collector and the Additional Commissioner. The Financial Commissioner held that the right of purchase under S. 18(1) of the Act could be exercised by a tenant whose tenancy existed on the date of the commencement of the Act and who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years on the date of the application for the purchase of the land and the land has not been included in the reserved area of the land- owner. The Financial Commissioner further held that -a tenant who, on the date of the application for purchase, own or holds land exceeding the permissible area will not be entitled to purchase the land under his tenancy. After setting aside the orders of the Collector and the Additional Commissioner, the matters were remanded to the Assistant, Collector, Fazilka, for a decision on merits.

The appellants-land owners filed Civil Writ No. 715 of 1963 in the High Court of Punjab to quash the orders -of the Financial Commissioner, Revenue, Punjab. The tenants of certain other properties had also filed applications for purchase and their landlords had filed Civil Writ No. 716 of 1963 before the Punjab High Court. Both these Civil Writ Petitions were disposed of by common judgment of the High Court, dated October 1, 1963. After a consideration of the scheme of the Act and in particular the provisions of S. 18, the High Court held that to have the benefit of S. 1 8 (I)

(i), the tenants must be in continuous occupation of the land under their tenancies for a period of six years on the date of making the application for purchase under that section. Accordingly the High Court agreed with the views expressed by the Financial Commissioner on this point and left open for consideration by the Assistant Collector certain other aspects that appear to have 'been pressed on behalf of the tenants.

Civil Appeals No. 2356 of 1966 and 2357 of 1966 are directed against the orders passed in Civil Writ Petitions Nos.715 and 716 of 1963 respectively. Similarly, a group of eight civil writ petitions had been filed by other land- owners before the Punjab and Haryana High Court challenging the orders passed by the Financial Commissioner, Revenue, upholding the right of the tenants to purchase the lands concerned. Civil Appeals Nos. 1471 of 1968 and 1508 to 1514 of 1968 are directed against the

orders passed by the High Court dismissing those writ petitions.

Certain other land-owners had contested the maintainability of applications filed by their tenants for purchase under s.18(1) and had made request to the concerned authorities to stay the proceedings and await the decision of this Court in Civil Appeals No. 2356 and 2357 of 1966. Apart from questioning the maintainability of the application filed by the tenants and the jurisdiction of the authorities to entertain those applications, certain other contentions had also been taken by the landlords. Stay of proceedings asked for by the land-owners was declined by the authorities and finally, by the Financial Commissioner,Revenue, by his order dated February 29, 1968. Against this common order Writ Petitions Nos. 116 of 1968 and 190 to 214 of 1968 have been filed, under Art. 32. In those Writ Petitions the jurisdiction of the authorities to entertain the applications under s. 18, filed by the tenants, arises for consideration.

At the outset we may state that in all these matters we are giving our decision only regarding the interpretation of s. 18 of the Act with special reference to the points mentioned at the beginning of this judgment, and any other matters which may arise for consideration in these proceedings are left open to be adjudicated upon by the appropriate authorities concerned, before whom proceedings may be pending.

On behalf of the land-owners, Mr. B. R.L. lyengar, learned counsel, after a reference to the material provisions of the Act, urged that the interpretation put on s. 18 by the High Courts against the entire scheme of the statute and that such an interpretation will defeat the very object and purpose for which the Act had been passed. Counsel pointed out that the Act clearly indicated that the lands treated as surplus area were exclusively intended for being utilised for re-settlement of tenants already ejected from the land or who were liable to be ejected under s. 9 (1) (i) of the Act. He further pointed out that if the test of six years' continuous occupation, dealt with under s. 18 of the Act, is considered to be satisfied with reference to the date when the application for purchase is made by a tenant, as held by the High Court, there will be a conflict between s. 10-A and s. 18. Counsel finally urged that having regard to the scheme of the Act, continuous possession for a minimum period of 6 years under s. 18 of the Act must be such possession on the date the Act came into force viz., April 15, 1953 and tenants who did not satisfy this condition were not entitled to exercise the right of purchase under s. 1 8.

Mr. S. V. Gupte, learned counsel appearing for the tenants, on the other hand pointed out that the object of the Act was to put a ceiling on the extent of property that could be held by a tenant or a landlord and for stabilising tenancies of long duration and confer on such tenants the

-right of pre-emption and a right of purchase. Counsel pointed out that the Act did not snap the relationship, of landlord and tenant,, but, on the other hand, tried to maintain the same. There was no prohibition, he pointed out, anywhere in the Act against creation of new tenancies after April 15, 1953. He further urged that the scheme of the Act clearly indicated that apart from other rights, a right of purchase was given to a tenant who was in actual possession of the land and if the tenant satisfied the requirement of having been in continuous possession for a minimum period of six years on the date of his filing an application for purchase, S. 18(1)(i) would stand attracted. It was also

urged that having due regard to the various provisions of the Act, there was no warrant to restrict the right of purchase under s. 18 (1) (i) only to a tenant who had been in continuous occupation of the land for a minimum period of six years on the date of the coming into force of the Act.

The other learned counsel, appearing in some of these matters either for the landlords or for the tenants have adopted the arguments of Mr. lyengar and Mr. Gupte, respectively.

It is necessary to broadly consider the general scheme of the Act in the first instance. The Act came into force on April 15, 1953 and it was to provide for the security of land tenure and other incidental matters. The Act has been amended from time to time in 1953, 1955, 1959 and 1962. Under the Act, as originally passed, it is to be noted that there were two other sections viz., ss. 7 and 15, which were later omitted. Even under s. 18, originally the period provided was 12 years. By the amendment Act. Punjab Act Xi of 1955, the period was reduced to 6 years.

As Mr. lyengar, in the course of his arguments, has referred to ss. 7 and 15, we shall just refer to the substance of those provisions. Section 7, dealing with the minimum period of tenancy, provided that no tenant on land other than the reserved area of a landowner shall be liable for ejectment before the expiry of a period of ten years from the commencement of the Act or from the commencement of his tenancy, whichever is later, and this was notwithstanding anything to the contrary contained in any other law and except as provided by the Act. Section 15 is a -corollary to s. 7 and.it provided that when a tenant, after the ex- piration of the period specified in s. 7 has been allowed to hold over, his tenancy shall be deemed to have been renewed for a further period of 10 years commencing from the date of his expiration, on the same terms and conditions. The object of Mr. lyengar relying upon these provisions was to show that the only protection-intended to be given to tenants on land other than on the reserved area of a landowner was to give a fixity for a period of 10 years and, if such tenants hold over, the tenancy was protected for a further period of 10 years. These sections, which have been subsequently deleted, do not, in our opinion, lend any Support to Mr. lyengar in the interpretation to be placed on s. 18.

By the Punjab Amendment Act XI of 1955, certain amendments were made in the parent Act.

Section 2(5-a) defining 'Surplus Area' was introduced by this Amendment. Section 7 of the original Act was deleted. Section 10-A was introduced and the period of 12 years in s. 18 was 80 2 substituted by a reduced period of 6 years. Section 16 of the original Act was substituted by a new section. Section 15 of the original Act was omitted by the Punjab Act XXXII of 1959.

One of the amendments in 1962 was the substitution of the new section 6 in the place of the old section. We shall now refer to the material provisions of the Act, as it stands at present.

We have already mentioned that the Act was passed to provide for the security of land tenure and other incidental matters. Section 2 defines the various expressions. In particular, it is only necessary to refer to the definition of the expressions 'permissible area', 'reserved area' and 'surplus area'. 'Permissible area' under s. 2(3), in relation to a landowner or tenant means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such

sixty acres. It is not necessary to refer to the proviso. 'Reserved area', under S. 2(4) means the area lawfully reserved under the Punjab Tenants (Security of Tenures) Act, 1950 as amended by President's Act of 1951. Section 2(5-a) defines 'surplus area'. Broadly speaking, 'permissible area' related to the thirty standard acres which a landowner or a tenant could possess and the 'reserved area' meant the area lawfully reserved under the Act of 1950, as amended by President's Act of 1951. That will be an area which the landowner will be entitled to choose for himself from his holdings in order to enable him to have the permissible area of thirty standard acres. Generally speaking, excess lands not covered by the reserved area and not in the possession of any tenant will be the surplus area so far as a landowner is concerned.

Section 5 gives a right to a landowner who owns land in excess of the permissible area to reserve out of the entire land held by him in the State of Punjab any parcel or parcels not exceeding the permissible area. Section 5-A makes it obligatory on a landowner and tenant holding land in excess of the permissible area to furnish a declaration in the manner and within the period provided therein. Section 5-B(1) enables a landowner who has not exercised his right of reservation under the Act to select his permissible area and intimate the selection to the authority conceded, in the manner and within the period stated therein. Sub-s. (2) gives power to the prescribed authority in cases where a landowner fails to select his permissible area to select the parcel or parcels of land which such landowner may be entitled to retain under the Act. Any transfer of land. excepting those mentioned under S. 6, made Between August 15, 1947 and February 2, 1955 will not affect the rights of tenants of such land under the Act. Section 8 safeguards the continuity of a tenancy. Section 9 provides for the conditions under which a tenant is liable to be evicted and under sub-s. (1)(i) a tenant on the area reserved under the Act or is a tenant of a small landowner can be evicted. But, under s. 9-A, a tenant liable to ejectment under cl. (i) of sub-s. (1) of s. 9, cannot be dispossessed unless he is accommodated on a surplus area in accordance with the provisions of s. 10-A of otherwise on some other and by the State Government. Section 10 gives a right of restoration to a tenant who has been ejected from any land in excess of the permissible area between August 15, 1947 and April 15, 1953 provided the land is under self-cultivation and the ejectment has been on grounds other than those mentioned in S. 9. Under sub-s. (4) of s. 10, in case of such restoration, the landowner or any other person in actual possession is entitled to such compensation as may be determined by the Assistant Collector from the tenant intended to be restored. Section 10-A gives power to 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 cl.

(i) of sub-s. (1) of S. 9.

It will be seen that while providing for eviction of a tenant from a reserved area under S. 9(1) (i), that tenant is safeguarded by s.9-A providing that his dispossession shall not take place unless he is accommodated on a surplus area and s.10-A provides for utilisation of surplus area for resettlement of tenants ejected or to be ejected under cl.

(i) of sub-s.(1) of s.9. These three provisions are interlinked and inter-connected. The Explanation to s. 10- A(b) makes it clear that the utilization of any surplus area' will not affect the right of a landowner to receive rent from the tenant so settled.

Section 12 provides for the quantum of rent payable by a tenant for the land held by him. Section 14-A provides for the procedure to be adopted by a landowner desiring to eject a tenant under the Act. Under S. 16, excepting id the case of lands acquired by the State Government or by a heir by inheritance, no transfer or disposition of land after February 1, 1955 shall affect the rights of the tenant thereon under the Act. Section 17 gives to the tenants mentioned therein, a right of preemption. The various provisions, referred to above, in our opinion, clearly indicate that the Act does not snap the relationship of landlords and tenants once and for all. In fact that relationship is fairly well preserved and a limited right of evicting tenants is given to the landlord and an obligation to pay rent is also cast upon the tenant. But, in respect of tenants who -are evicted or are liable to be evicted under s.9(1) (i) of the Act. provision 8 04 is made for re-settling them under s.9-A read with s.10-A of the Act. Such re-settlement does not affect the right of the landowner to receive rent from the tenant. The provisions of s.6 and s.16 also indicate that excepting the particular types of transactions, referred to therein, no other, dealing with the property by the, landowner will affect the rights that the tenant has under the Act, In fact these two provisions take in cases of transfer prohibited thereunder after August 15, 1947 and also subsequent to the date of the coming into force of the Act. It will also be noted that the definition of 'surplus area' under s.2(5-a) and s-10-A giving power to the State Government to utilise the surplus area for re-settlement of the tenants were both brought in by the Amendment Act of 1955 and with retrospective effect from the date of the original Act, viz., April 15, 1953 We then come to the material section, s.18, which is as follows "18(1) Notwithstanding anything to the contrary contained in any law, usage of contract, a tenant of a land-owner other than a small land-owner-

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period. of six years, or

(ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous occupation of the land comprised in his tenancy immediately before ejectment and immediately after restoration of his tenancy together amounts to six. years or more, or

(iii)who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of this Act, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejectment, shall be entitled to purchase from the land- owner the land so held by him but not included in the reserved area of the land-owner, in the case of a tenant falling within clause (i) or clause (ii) at any time, and in the case of a tenant falling within clause (iii) within a period of one year from the date of commencement of this Act.

Provided 'that no tenant referred to in this subsection shall be entitled to exercise any such right in respect of the land or any portion thereof if he had 80 5 sublet the land or the portion, as the case may be, to any other person during any period of his continuous occupation, unless during that period the tenant was suffering from a legal disability or physical infirmily, or, if a woman, was a widow or was unmarried;

Provided further that if the land intended to be purchased is held by another tenant who is entitled to preempt the sale under the next preceding section, -and who is not accepted by the purchasing tenant, the tenant in actual occupation shall have the right to pre-empt the sale.

. . . . . ."

Section 18(2) deals with the procedure to be adopted by the tenant who is desirous of purchasing land. Sub-s. (3) provides for the purchase price being three-fourths of the value of the land determined by the Assistant Collector. Under sub-s. (4) it is open to the tenant to pay the purchase price either in a lump-sum or in six-monthly instalments not exceeding ten. It further provides that on the purchase price or the first instalment thereof being deposited, a tenant shall be deemed to have become the owner of the land. The other matters dealt with in s. 18 are not necessary to be gone into.

Under s. 18(1) three categories of tenants have been given a right to purchase from the land-owner the land so held by him, but not included in the reserved area of the land-owner and they are (i) a tenant who has been in continuous occupation of the land for a minimum period of six years;

(ii) a tenant restored to his tenancy under the Act and whose period of continuous occupation of the land comprised in his tenancy immediately before ejectment and after restoration amounts to six years or more; and (iii) a tenant who was ejected from his tenancy after August 14, 1947 and before April 15, 1953 and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejectment. Before dealing with the first category, we will refer to the tenants coming under categories (ii) and (iii). Regarding the second category, the period of occupation by a tenant both prior to and after the date of the Act are taken into account for computing the period of occupation of six years or more. It is thus clear that the occupation by him for part of the period which will be after the date of the Act is admittedly taken into account to give him a right to purchase the land. He also represents the type of tenants whose possession has been disturbed prior to the date of the Act and who gets Possession again by virtue of being restored under the Act to his tenancy and such possession is counted in his favour. For persons coming in category (ii), 80 6 there is no time limit within which they should exercise the right to purchase. On the other hand S. 18(1) clearly gives such persons a right to purchase the land at any time. Category (iii) deals with tenants who have been ejected after August 14, 1947 and before April 15, 1953, but prior to such eviction they have been in continuous occupation of the land for six years or more. Admittedly, such persons were not in possession of the land as tenants on the date when the Act came into force, i.e., on April 15, 1953. But, nevertheless,, if such a person who has been evicted during the particular period above mentioned had been at the time of his ejectment in continuous occupation of land comprised in his tenancy for a period of six years or more, he is given a right to purchase the land. That is, a person who had lost all contact with the land on the date of the Act as a tenant, and who Was not in possession on the date of the coming into force of the Act, is also given a right to purchase the land provided his ejectment was after August 14, 1947 and before April, 15, 1953. For a tenant coming under this category the section provides that he must exercise his right to purchase within a period of -one year from the date of commencement of the Act.

Coming to clause (i) of s. 18(1), that clause does not ex- pressly state as to when the tenant referred to therein should have completed his continuous occupation of a minimum period of six years. According to the land-owners, such a tenant must have completed the period of six years on April 15, 1953, whereas, according to the tenants it is enough if the period of six years had been completed on the date when an application for purchase is made. The question now is whether the scheme of the Act indicates whether the six year period should have been completed on April 15, 1953, the date when the Act came into force.

In our opinion, having due regard to the scheme of the Act, there is no warrant for importing any such restriction in S. 18 (1) (i) of the Act. If the intention of the Legislature was that the tenant under s. 18 (1) (i) should have been in continuous occupation for a minimum period of six years on the date of the Act,, it would have been specifically so provided for in the said clause.

There is also intrinsic evidence in S. 18 (1) (i) itself that it is not necessary for -a person coming under sub-cl.

(i) that he should have completed his continuous occupation of six years on the date of the Act. We have already referred to the category of tenants coming under cl. (ii) and shown that the Act recognizes their possession for a period a part of which must certainly be subsequent to the commencement of the Act. When the Object of the Act, as seen from cl. (ii) is to protect even tenants who get back into possession of the land after the date of the Act, we do not see any reason why a limitation should be read in cl.

(i) 80 7 in respect of a tenant who is in possession of the land that he should have completed the period of six years of continuous occupation even prior to the date of the Act. There is an additional reason why we cannot read any such limitation into cl. (i). Clause (iii) dealing With the third category of tenants, admittedly relates to a tenant evicted from the property even before the date of the Act and who was not in possession on the day when the Act came into force. But, nevertheless, if such tenants had been in continuous possession for six years at the time of their ejectment which must be before the late of the Act, they are entitled to purchase the property, but hat must be exercised within a period of one year from-the date of the commencement of the Act. If Mr. Iyengar's contention that the tenants in category (i) should have completed the con- tinuous period of six years on the date of the Act is correct, such tenants and tenants coming under category

(iii) will be on a par in that both would have completed their period of six years before the date of the Act. Nevertheless in the case of tenants coming under category

(iii), the Legislature has specifically stated that they must exercise their right of purchase within a period of one year from the date of the Act whereas in the case of tenants coming under cl. (i) they could exercise the right at any time. This itself clearly indicates that the tenants coming under category (i) -are entirely different from the tenants coming under category (iii). If (iii). If both types of tenants coming under clause (i) and clause (iii) stand on the same footing, the position would be that both would have completed the period of continuous occupation of six years prior to the Act and the Legislature would have provided that both should exercise the right of purchase within a

period of one year. The distinction made regarding the period within which these two categories can exercise their right, clearly indicates the intention of the Legislature to the contrary. It stands to reason that the tenants coming under clauses (i) and (ii) who are in actual possession of the land have been gives the option 'either to continue as tenants and pay rent or to exercise their right to purchase the land at any time. There is no question in their case of there being any time-lag,or doubt because, being in possession no other person's right will normally be affected; whereas in the case of a tenant coming under cl.

(iii), he has already gone out of the land and therefore the Legislature has specifically provided a very short period of one year from the date of the Act for exercising, if he so chooses his right to purchase the I-and provided he satisfies the other conditions mentioned in the section. The Legislature did not want the position to be kept nebulous and doubtful in respect of such a person who was not in possession as a tenant on the date of the Act. While coming- to a tenant who satisfies the requirements of cl.

(iii) of s. 18 (1), the Legislature has taken care to see that those types of tenants are made to take a decision to purchase the land within the shortest possible time so that other peoples' rights may not be jeopardized.

Nor is there any warrant for the contention of Mr. lyenger that the person who claims the right under cl. (i) should have been a tenant on April 15, 1953. So far as we could see, there is no prohibition under the Act placing any restriction against the right of the landowner creating new tenancies after the date of the Act. In fact the second proviso to s.9-A clearly indicates to the contrary. It deals with the contingency of tenancy coining into force after the commencement of the Act.

section 18 (1) (i) gives a right to a tenant to purchase the land; and that right has to be examined when an application under s. 18 is made and cannot be denied on the ground that he was not a tenant for more than six years on April 15, 1953. There is no limitation placed under cl.(i) of s.18(4) that the 'tenant who exercises his right should be a tenant on the date of the Act or that he should have completed the period of six years on April 15, 1953 and there is no warrant for reading in s.18(1)(i) clauses which it does not contain. It is enough if the continuous period of six years has been completed on the date when the tenant files' the application for purchase of the land.

We were referred to three decisions : Ganpat v. Jagmal(1); Amar Singh v. State of Punjab(1). and Mam Raj v. State of Punjab (3). In the first decision the question was whether a transfer by a landowner in excess of the reserved area has to be ignored when the rights of a tenant under s.18 are being considered. In the second and third decisions the question was whether an order for. purchase passed in favour of a tenant under s. 18 can be ignored by the Collector when exercising his functions under s. 10-A of the Act. In none of the decisions the points now decided by us came up for consideration directly and therefore it is not necessary to deal with those)decisions in detail.

To conclude we are of opinion that in order to claim a right of purchase - as against the landowner under S. 18 (1) (i) of the Act, the minimum period of six years should have been completed at the

time when the application for' purchase by the tenant is made, and it is not necessary that he should have been a tenant of the land on April 15, 1953. Provided the other conditions are satisfied, such a tenant will be entitled to purchase the land.

In the result the writ petitions and appeals are dismissed with costs-such costs to be one hearing fee.

R.K.P.S. Petitions and appeals dismissed.

(1) (1963) Punj L.R. 652. (2) I.L.R. [1957] 2 Punj. & Har. 120.

(3) I.L.R. [1969] 2 Punj. & Har. 680.