(2009) 05 P&H CK 0062

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Thakardwara Bhagwan Narain Ji, Pandori Mahantan		APPELLANT
	Vs	
Financial Commissioner, Appeals-I and Others		RESPONDENT

Date of Decision: May 19, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226, 32

Citation: (2009) 155 PLR 563 : (2009) 4 RCR(Civil) 120

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Judgement

Ranjit Singh, J.

This order will dispose of Civil Writ Petition No. 19981 of 2001, 1627, 2945 and 2997 of 2002 (Thakar Dwara Bhagwan Narain Ji, Pandori Mahantan and Anr. v. The Financial Commissioner (Appeals-I), Punjab and Ors.). Other writ petitions listed alongwith these petitions are Nos. 15811 of 1999 (Fauju v. The Financial Commissioner (Relief and Resettlement), Punjab, Chandigarh and Ors.) and 15812 of 1999 (Bachan Singh v. The Financial Commissioner (Relief and Resettlement), Punjab, Chandigarh and Ors.). These have been filed by respondent-tenants, challenging the order of their ejectment. Four Writ Petition Nos. 6911 and 6912 of 2002 (Lali v. The Financial Commissioner (Appeals-I), Punjab and Ors.) 6913 and 6914 of 2002 (Harbans Singh and Ors. v. The Financial Commissioner (Appeals-I), Punjab and Ors.) are those through which the tenants have challenged the order directing recovery of rent. Writ Petitions No. 2671 of 1982, 2790 of 1983, 2789 of 1983, 1151 of 1985, 1082 of 1985 and 1083 of 1985 were filed by the tenants to challenge finding given by the Commissioner and Financial Commissioner holding that Thakar Dwara Bhagwan Narain Ji, Pandori Mahantan (hereinafter referred to as "Thakur Dwara") was not the owner, with further prayer to seek permission to purchase the land

under the tenancy of the petitioner therein. These writ petitions were disposed of as in-fructuous on 22.1.2009.

2. The facts are being taken from Civil Writ Petition No. 19981 of 2001. Thakur Dwara, in this and other similar writ petitions, seeks quashing of order dated 14.5.2001, Annexure P-6, passed by the Financial Commissioner (Appeals), Punjab, Chandigarh, who had set-aside the order passed by the Additional Commissioner (Appeal), Jalandhar, dated 27.2.1998 and that of the Collector, Gurdaspur dated 7.10.1991. It is pleaded that through this cryptic and non-speaking order, the applications for purchase filed by respondent Nos. 2 to 19 stand illegally allowed. It is averred that Thakur Dwara is the owner of the land situated in Villages Sadana, Mahrajpur and Dakhla where respondent Nos. 2 to 19 are the tenants, who are cultivating the land. Civil Writ Petition No. 2997 of 2002 is concerning the land situated in Village Bhagwanpura, where respondent Nos. 2 to 5 in the said writ petition are tenants.

3. On 1.7.1958, Mahant Ram Dass filed a return under the Punjab Security of Land Tenure Act, 1953 (hereinafter called "the Tenures Act") before Special Collector, Punjab, Chandigarh. The land owned and held by him was then verified, which was situated in District Gurdaspur, District Hoshiarpur, District Kangra and District Una in Himachal Pradesh. Special Collector, Punjab, vide his order dated 27.7.1961, declared the area measuring 1472 standard acre and 8-3/4 units as surplus in the hands of Ram Dass Chela Braham Dass. Area of Thakar Dwara was never determined as surplus. Since the surplus area was declared in the hands of Ram Dass in his individual capacity, he moved application for correction of the revenue record on the ground that instead of Ram Dass, Thakar Dwara be declared and recorded as owner of the land in dispute. The District Collector, Gurdaspur, vide his order dated 11.6.1964 held that Thakar Dwara was the owner of the land and not Ram Dass. All proceedings held at the instance of Ram Dass were declared null and void. Even devotees of Thakar Dwara filed a civil suit for declaring the Thakar Dwara to be owner of the land and that Mahant had no right or title in respect of landed property. This suit was decreed by civil court on 1.6.1968, holding that land belonged to Thakar Dwara and not Mahant. The order passed by the District Collector and the decree dated 1.6.1968, referred to above, attained finality as these were never challenged.

4. On 31.12.1974, the land situated in Villages Bhagwanpura, Dakhla, Sadana Maharajpur, Jattowal etc. which was held to be of Thakar Dwara, was allotted to the respondents under the provisions of the Punjab Land Reforms Act (for short, "the Reforms Act"). This was allegedly done without following the proper procedure. Notices u/s 9(1) of the Act were issued to the Thakar Dwara for delivery of possession. Petitioner, Thakar Dwara, filed Civil Writ Petitions Nos. 9 of 1975 and 148 of 1975 before this Court, challenging the action of Collector, Agrarian, in attaching the land and issuing notice u/s 9(1). These writ petitions were allowed on

26.3.1979 and the case was remanded to Collector, Agrarian, for a fresh decision. The possession of petitioner, Thakar Dwara, was protected vide this order. The Collector, Agrarian, then took up the matter and recorded a positive finding on the basis of evidence that actually Thakar Dwara was the owner of the land and not individual, Mahant Ram Dass. In his order dated 13.10.1980, the Collector further held that Thakar Dwara was a temple and so the provisions of Section 14 of the Act would apply. The notices issued to Thakar Dwara u/s 9(1) of the Act were accordingly cancelled.

5. Aggrieved against the same, tenants filed an appeal before the Additional Commissioner, Jalandhar, who allowed the same holding that the property did not belong to Thakar Dwara. The Additional Commissioner directed the Collector to take possession of the land and to give it to various allottees. The petitioner challenged this order passed by the Additional Commissioner, Jalandhar, before the Financial Commissioner through R.O.R. No. 514 of 1982-83. Some of the respondent-tenants also approached the Financial Commissioner as their appeals were rejected on the ground of limitation. These petitions came up for hearing before the Financial Commissioner, who, after going through the detailed arguments and considering all the materials placed before him, came to hold that order of the Collector dated 13.10.1980 was legal, valid and perfect. Financial Commissioner also recorded a finding that mere entry in the name of Mahant in the column of ownership did not mean that property was of Mahant. He accordingly set-aside the order passed by the Additional Commissioner. Apart from other findings, the Financial Commissioner, in this order dated 11.9.1985, also recorded a finding that the land in dispute belongs to Thakar Dwara, which is a religious institution of public nature and as such, provisions of Section 14 of the Act will be attracted in this case. He not only set aside the notices issued under Sections 9(1) and 9(2) of the Act but also quashed the allotment made to the allottee-respondents in 1974 by the Collector. Accordingly, the revision petition filed by the petitioners was accepted whereas those filed by respondent Nos. 2 to 19 were dismissed.

6. Concededly, this order passed by the Financial Commissioner dated 11.9.1985 has acquired finality as none of the parties has challenged the same. The order is placed on record as Annexure P-2.

7. In order dated 11.9.1985, the Financial Commissioner cancelled the allotment of land in favour of the respondent-tenants. Financial Commissioner had also quashed the notices issued u/s 9(1) of the Reforms Act for delivery of possession. Instead of challenging this order, the tenants moved an application on 1.5.1986 before Assistant Collector, Ist Grade for purchase of the land u/s 15 of the Reforms Act. The petitioner would challenge this move of the tenants on the ground that this application was barred by time and beyond the scope of Section 15 of the Reforms Act. This Section is stated to be para-materia to Section 18 of the Tenures Act. Since the Reforms Act had come into force on 2.4.1973, it is stated that the tenants could

exercise their right for purchase of this land u/s 15 thereof within one year from the commencement of the Act. Respondents, however, never opted to exercise this option of their right to purchase this land within the time stipulated. It is accordingly pleaded by the petitioner that the application filed by the respondent-tenants would not be maintainable after the expiry of the period specified in the Section, which, according to the petitioner is mandatory. Assistant Collector, however, allowed this application on 23.1.1991, which is termed as erroneous by the petitioner besides referring it to be a non-speaking and cryptic order. The petitioner, therefore, challenged this order before Collector, Gurdaspur, who, on 7.10.1991, accepted the appeal and set-aside the order passed by the Assistant Collector Ist Grade. While allowing the appeal, the Collector relied upon order passed by the Financial Commissioner dated 11.9.1985 and also held that Section 15 was mandatory in nature. Respondent-tenants thereupon filed an appeal against the order passed by the Collector before Commissioner, Jalandhar Division, Jalandhar. Commissioner held that there was no evidence brought on file to prove that the land in dispute was declared surplus in the hands of Thakar Dwara. He also recorded a finding that the tenants failed to establish their contention through any cogent or reliable documentary evidence to show that the suit land was ever allotted by any competent authority. He also found fault with the action of the respondents in not exercising their rights in filing the purchase application in time immediately after enforcement of the Reforms Act. He accordingly dismissed the appeal filed by the respondent-tenants on 27.2.1998.

8. Respondent-tenants thereafter filed a revision before the Financial Commissioner, who vide his order dated 14.5.2001, has accepted the same, which is now under challenge in the writ petitions. The grievance of the petitioner is that while passing the impugned order, the Financial Commissioner has not considered the legal and valid pleas raised by the petitioner. The petitioner has specifically pointed out that there was no evidence on record to prove that the area was ever declared surplus in the hands of Thakar Dwara. The surplus area, as per the petitioner, was determined in the hands of Ram Dass in his individual capacity, which had been declared null and void and Thakar Dwara was held to be the owner of the property. This order dated 11.6.1964 had become final as it was never challenged. The contention, thus, is that there was no determination of surplus area, which could lead to allotment or entitle the respondents to file a purchase application. The petitioner would also point out to the order dated 11.9.1985, Annexure P-2, where the then Financial Commissioner, had recorded a finding to the effect that Thakar Dwara was the owner and Mahant Ram Dass had nothing to do. The surplus area declared in the hands of Ram Dass having been declared in individual capacity, thus, was termed as null and void. This order passed by the then Financial Commissioner had become final and the notices issued u/s 9(1) and the allotment in favour of the respondents was quashed. The plea accordingly was that respondent-tenants were not entitled to move application for the purchase of the land. This was in addition to the plea that

the respondent-tenants had not exercised their right to purchase within the stipulated period as provided under the Reforms Act and as such, they were now estopped by their own act and conduct from purchasing the land, it being beyond the scope of the provisions of the Reforms Act.

9. It may be recapitulated here that the land was allotted to the respondents in village Bhagwanpura, Dhakhla, Sadana, Mehrajpur and Jattowal on 31.12.1974 after enforcement of the Reforms Act, As per the petitioner, this was done without following the proper procedure. The notices were issued u/s 9(1) of the Reforms Act to the Thakar Dwara for delivery of possession. The petitioner filed Civil Writ Petition Nos. 9 of 1975 and 148 of 1975, which were allowed by this Court on 26.3.1979. The case was remanded to the Collector Agrarian for fresh decision. Collector, Agrarian then vide his order dated 13.10.1980, had held that land was actually in the ownership of Thakar Dwara and not that of individual Mahant Ram Dass. The Collector further held that the Thakar Dwara was a Temple and the provisions ,of Section 14 of the Reforms Act were applicable and accordingly notices issued u/s 9(1) of the Reforms Act were cancelled. This order passed by the Collector was upheld by the Financial Commissioner on 11.9.1985, being perfect, while setting-aside the order passed by the Commissioner dated 27.6.1983. Reference here may be made to Civil Writ Petition No. 2671 of 1983 and another connected writ petition, whereby the purchase applications filed by the respondents were rejected and challenged before this Court through the said writ petitions. While issuing notice of motion in these writ petitions on 30.5.1983, this Court directed that the proceedings may go on but final order be not passed. These writ petitions were admitted on 17.4.1983 and the interim order was continued. It is accordingly pleaded, by the petitioner that during the pendency of these writ petitions, Financial Commissioner could not have competently decided the matter unless this Court had taken a final decision on the prayer made by the respondents. These writ petitions were dismissed as in-fructuous on 22.1.2009 as the Financial Commissioner had already allowed the purchase application filed by the respondents.

10. While hearing the petitions and once the counsel for the petitioner had concluded their submissions, it was noticed by the Court that the written statement had only been filed in one case. Counsel for the respondents, thus, prayed for opportunity to file written statement. In the interest of justice, this permission was granted. The written statement was accordingly permitted to be placed on record.

11. In the written statement filed, the respondents have raised some preliminary objections. It is pleaded that separate order was passed by Assistant Collector Ist grade in regard to separate parcel of lands concerning the purchase applications filed by different respondents impleaded in the writ petitions. These orders were challenged by filing separate R.O.R Nos. 669, 671, 674, 676, 678 of 1997-98. It is, thus, pleaded that the orders passed in separate R.O.Rs were required to be challenged separately by way of separate writ petitions as these pertained to

separate parcel of land and, thus, related to separate causes of action. The respondents, thus, would plead that the said orders having not been challenged in respect of respondent Nos. 5 to 19 have accordingly become final. It is pleaded that the writ petitions are, thus, liable to be dismissed being barred by the doctrine of res judicata.

12. The respondents also seek dismissal of the writ petitions for non-joinder and mis-joinder of different causes of action and misjoinder of parties. It is pointed out that separate orders for separate parcel of land were passed on separate purchase applications filed by all the respondents herein. It is also pointed out that the order dated 23.1.1991 was passed separately in separate purchase applications and, thus, could not be joined together in a single writ petition where order dated 14.5.2001 passed in favour of respondent Nos. 2 to 4 alone is under challenge. It is accordingly stated that the writ petition is bad for misjoinder of cause of action and mis-joinder of parties and, thus, liable to be dismissed,

13. The plea of res judicata is also raised on another score. Respondents would plead that order dated 11.9.1985, Annexure P-2, has been allowed to become final and, thus, would be binding on the parties. It is stated that the declaration made in the said order to the effect that surplus land declared under the old Act would be governed by the provisions of the old Act and would not be governed by the provisions of new Act would mean that right to purchase available with the respondents under the old Act would remain intact and would not be effected by the provisions of the new Act. To quote the respondents, "this proposition of law having not been challenged and having become final between the parties, the answering respondents are entitled to purchase the land in question under the provisions of Section 18 of the old Act," is pressed to justify the impugned order dated 14.5.2001, allowing purchase applications. It is accordingly pleaded that the petitioner can not dispute the rights of the answering respondents to purchase the land u/s 18 of the old Act and the writ petition to make this challenge would be barred by principle of res judicata.

14. While replying on merits, it is pointed out that Mahant Ram Dass had filed the declaration for determination of surplus area as owner through his attorney and accordingly the surplus area was determined in the hands of Mahant Ram Dass. After the aforesaid order of declaring the surplus area, the proceedings for allotment to the tenants were initiated and some land was also allotted to the respondents in different villages. It is pointed out that there was no provision under the old Act, giving any exemption from utilization of the surplus area of the religious institution and no distinction as such could be made while assessing the land in the hands of living person and the religious institution under the provisions of the old Act. Mahant Ram Dass, as per the respondents, had filed this application for correction of record to replace his name by the name of Thakar Dwara with an ulterior motive to save the surplus area from being utilized. The Collector had

accordingly declared Thakar Dwara as an owner vide his order dated 1.6.1964 and further held that the surplus area of such religious institution could not be utilized in view of the instructions memo No. 2927-39 dated 13.9.1960. Reference is also made to a decree dated 1.6.1968 in favour of Thakar Dwara, which is stated to be a collusive one suffered by the Mahant to save the surplus land from utilization.

15. While this order/decree was under challenge, the surplus area of the petitioner was allotted to different tenants on 31.12.1974. This allotment included the land in question allotted to the answering respondents. The notices were also issued to the land owners u/s 9(1) of the Reforms Act. It was to challenge these orders that Civil Writ Petition Nos. 9 and 148 of 1975 were filed, seeking exemption of the surplus area from being utilized in view of the provisions of Section 14 of the Reforms Act. As per the respondents, these writ petitions were allowed to a limited extent for providing hearing to the petitioners and cases were remanded to the Collector vide order dated 26.3.1979. It is then that the Collector had held Thakar Dwara as owner and, thus, granted exemption for utilizing the land under the provisions of Section 14 of the Reforms Act. Notices issued u/s 9(1) were, therefore, cancelled. The appeal filed by one Thura Ram against this order was accepted by the Commissioner on 27.6.1983 whereas the appeals filed by other 36 tenants were dismissed on 23.8.1983 being time barred. The then Financial Commissioner, P.K. Kathpalia, thereafter vide his order dated 11.9.1985 (Annexure P-2) had held that land was owned by petitioner, Thakar Dwara and also quashed the notices u/s 9(1) issued to the land owners. It is conceded that the allotments dated 31.12.1974 would stand cancelled as held by Financial Commissioner in his order dated 11.9.1985 (Annexure P-2) but reference thereafter is made that the Financial Commissioner further held that surplus area was declared in the year 1961 was not challenged and became final and, therefore, the land so declared as surplus under the provisions of the old Act would remain surplus and would continued to be governed by the Tenures Act and the provisions of Section 14 of the Reforms Act would not effect the land already declared surplus under the Tenures Act. The respondents would contend that the allotment already made under the Tenures Act would remain intact. Reference is also made to the observations made by the Financial Commissioner wherein he has said that instructions dated 13.9.1960 did not carry any force of law and, therefore, were inapplicable. From this, the respondents have pleaded that the effect of order dated 11.9.1985 (Annexure P-2) is that the right to purchase the land with the respondents would be available u/s 18 of the Tenures Act. There being no limitation under the said Section, the purchase application as filed by the respondents would be maintainable without any reference to the provisions of Section 15 of the Reforms Act, which, as per the respondents, is not applicable.

16. In the alternative, it is pleaded that even if it is construed that Section 15 of the Reforms Act would be applicable, yet the period of limitation for filing the purchase application would start from the dates when the dispute regarding the ownership and other issues were settled by the Financial Commissioner on 11.9.1985 and the

purchase applications, which were filed on 1.5.1986 would, thus, be within the period of limitation i.e. one year from the date of this order.

17. The answering respondents would further plead that in fact there was no need to file any purchase application. As per the respondents, the land in question was allotted to them on 31.12.1974 under the provisions of 1973 Scheme, which is under the Reforms Act. As per this, the answering respondents were to become owners of the land in question and, thus, there was no requirement of filing the purchase application. The requirement of filing the purchase application only arose on 11.9.1985, when the Financial Commissioner set-aside the order of allotment dated 31.12.1974: Thus the cause of action, according to the respondents, arose for filing the purchase application and when order dated 11.9.1985 was passed and period of limitation should be calculated from the said date. The respondents have further pleaded that in order dated 11.9.1985, it has been observed that the provisions of Reforms Act would not apply to the land declared surplus under the Tenures Act and, thus, the allotments made in the year 1974 were cancelled, when the necessity to file the application arose, which the respondents utilized and filed application in January 1986. It is accordingly pleaded that provisions of Section 15 of the Reforms Act would not apply in the instant case as held by the Financial Commissioner, though the respondents would say that this application was filed without any delay having regard to these peculiar facts and circumstances of the case.

18. In the reply, strong reliance has been placed by the respondents on Para 10 of order dated 11.9.1985 (Annexure P-2). The relevant portion of the same has been reproduced in the reply. On this basis, it is pleaded that the Financial Commissioner has held that declaring Thakar Dwara as owner would not effect the position of the tenants and allottees under the Tenures Act and the safeguards provided thereunder would continue to be applicable to the tenants. From this, it is pleaded that the case of the answering respondents would be governed by Section 18 of the Tenures Act and not by Section 15 of the Reforms Act. Plea further is that no limitation is provided u/s 18 of the Tenures Act. The answering respondents would also plead that where substantial justice is pitted against the technicalities of law of limitation, the justice should prevail as the Courts are respected for doing substantial justice and not to defeat the justice on mere technicalities of law of limitation. This is on the basis of the observations made in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . In this background, the action of the Financial Commissioner in allowing the purchase application is justified by the answering respondents and is termed as legal and valid. The contentions raised on merits are also denied by the answering respondents.

19. Before dealing with the submissions on merits, the preliminary submissions raised by the counsel for the respondents, especially relating to the plea of res judicata, are required to be dealt with. The counsel for the respondents would contend that eight separate orders were passed, though these were common, which

have been challenged by filing a single writ petition. As per the counsel, the orders passed by the Financial Commissioner in those applications, which have not been challenged by the petitioner, would become final and, thus, the orders impugned in the present writ would be barred by principle of res judicata. In support, the respondents has referred to Narhari and Others Vs. Shankar and Others, , which, according to the counsel is the basic judgment on the issue. This was a case in which from the decree of trial Court in favour of the plaintiff, two separate appeals were taken by two sets of the defendants. The Appellate Court allowed both the appeals and dismissed the plaintiffs suit by one judgment and ordered a copy of the judgment to be placed on the file of other connected appeal. Two decrees were prepared. The plaintiffs preferred two appeals, one of which was time barred. On the principle of res judicata, the High Court dismissed both the appeals. Supreme Court held that it was not necessary to file two separate appeals in this case and the question of res judicata would arise only when there were two suits. As there was one suit and both the decrees were in the same case and based on the same judgment and the matter decided concerned the entire suit, the principle of res judicata would not apply. Taking support from this judgment, the counsel seems to contend that when the suits are different and judgment in one is not challenged, it being common judgment, the other would require to be dismissed on the principle of res judicata. The counsel then refers to The Direct Recruit Class-II Engineering Officers'' Association and others Vs. State of Maharashtra and others, , where it is held that subsequent petition under Article 32 by same party and for same relief would be barred by doctrine of res judicata where writ petition had been dismissed by the High Court under Article 226 on merits. Reliance is placed on Parshotam Singh v. State of Punjab and Ors. 1998 (1) S.L.R. 369 to say that the doctrine principle of res judicata would apply in the case of writ petitions as well. Division Bench of this Court took a view that failure of the petitioner to persuade the Supreme Court to interfere with the appointments of respondents on the solitary ground that they have not been selected for recruitment and their names did not find place in the Register, required to be maintained, the petitioner would be barred to agitate the same in the High Court by constructive res judicata. In AIR 1976 688 (SC) , referred to by the counsel for the respondents, it was held that when second appeals arising out of two suits filed by the plaintiff are treated as connected appeals and disposed of by the High Court by a common judgment, there is ordinarily no question of invoking the plea of res judicata before the High Court as the findings in the earlier suit are not till then final for the purpose of second suit. In third appeal from the decision in the second suit only, it is held that final and conclusive finding in the first suit operates as res judicata. The Hon''ble Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, took a view that where the trial court has decided two suits having common issues on the merits and there are two appeals therefrom and one of them is dismissed on some preliminary grounds, like limitation or default in printing with the result that the trial court''s decision stands confirmed, the decision of the appeal court will be res judicata and the appeal court must be deemed to have heard and

finally decided the matter. The Hon''ble Supreme Court further observed that in such a case, the result of the decision of the appeal court is to confirm the decision of the trial court given on merits, and if that is so, the decision of the appeal court will be res judicata. Heavy reliance is placed by the counsel for the respondents on this judgment, which, according to him is identical to the submissions made by him in the present case. In this regard only, reference is made to Fakirmohan Rana and Others Vs. Sri Basanti Debi Thakurani and Others, . Five different suits in this case were decreed by a common judgment and five appeals were filed, one of them was dismissed as barred by limitation. It was held that when the trial court''s judgment stood affirmed by dismissal of appeal; the appeal must be deemed to have been disposed of on merit. Thus, the bar of res judicata was held attracted in this case.

20. In support of his submission that the writ petition is not maintainable on the ground that one common petition is filed to challenge different orders passed by the Financial Commissioner and such a writ petition would not be competent, support is taken from observations made by this Court in The Jalandhar Improvement Trust Vs. The President Land Acquisition Tribunal, Jalandhar, Improvement Jalandhar and Others, , which was a case where separate awards passed by the Tribunal were challenged by filing one petition and it was held that writ petition is not competent as the petitioner had a separate cause of action in every case. This Court in Private Trust v. Land Acquisition Tribunal, Ludhiana and Ors. 2007(1) R.C.R. (Civil) 433 relying upon the judgment in the case of The Jalandhar Improvement Trust (supra), held that single joint petition against numerous awards would not be competent.

21. On the other hand, the counsel for the petitioner has referred to writ rules as contained in the High Court Rules & Orders to say that filing of writ is governed by said rules and the provisions of the CPC would not strictly apply to writs. It appears that the counsel seems to contend that the framing of a writ would be governed more by the provisions of writ rules contained in the High Court Rules & Orders rather than the provisions of the Civil Procedure Code. By referring to Para 21 of Part III, Chapter 4, Volume 5 of High Court Rules & Orders, it is submitted that every person who is likely to be affected in any manner by the result of a petition is to be joined as a respondent thereto and any petition in which a necessary party is not impleaded shall be liable to be dismissed. The counsel, thus, appears to contend that all the respondents affected and named in the common order, which is under challenge in the present writ petition, have been joined as respondents and as such this would satisfy the requirement of formulating a writ petition in terms of High Court Rules & Orders and, thus, the objection in regard to maintainability or competence would not arise in this case. In this connection only, reference is made to Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, . In this case, Hon''ble Supreme Court has taken a view that the petition would not be competent where person in whose favour impugned order is passed is not joined as a party. From this, it is sought to be contended that since the persons, in whose

favour the common order was passed by the Financial Commissioner, have been joined as a parties in the writ petition, so the writ petition would be competent. Reference is then made to Prithu and Anr. v. The Financial Commissioner (T) Punjab and Ors. 1975 P.L.J. 29 to urge that writ petition is not to be thrown on technical plea of laches where manifest injustice is seemed to have been done to the petitioner. It was observed in this case that the writ petition having been admitted, the same cannot be thrown out on the ground that the discretion should not be exercised to undo manifest injustice done to the petitioner on the technical plea of laches. Reference is also made to Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others, to say that the doctrine of constructive res judicata not applicable to writ proceedings. These observations were made in a case of preventive detention where petition under Article 226 was dismissed and subsequent petition under Article 32 was filed on the point which was not agitated before the High Court and it was held that it can be so raised before the Supreme Court. Reference is also made to Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, to contend that question cannot be deemed to have been finally determined by an erroneous decision of the court and such decision cannot operate as res judicata in subsequent proceedings.

22. On the basis of respective contentions so made, it is now to be seen whether the present petition can be said to be competent or if it is to be dismissed by applying the doctrine of res judicata. Concededly, the Financial Commissioner had passed one common judgment and disposed of different R.O.Rs. filed before him. The perusal of impugned order, Annexure P-6, would show that this common order has been passed in R.O.R. Nos. 668, 669, 671, 674, 675, 676, 678 and 679 of 1998. The different parties, who had filed, have been mentioned in the title of the impugned order in separate R.O.Rs. In fact, the impugned order clearly makes a reference that eight revision petitions filed u/s 24 of the Punjab Security of Land Tenures Act are against the orders passed by the Commissioner and Collector etc. Thus, eight petitions were disposed of by this common order, which is challenged in this writ petition. Memo of parties in the writ petition would show that all the persons, who had filed these eight different R.O.Rs., have been impleaded as party respondents in this writ petition.

23. It is now to be seen whether the doctrine of res judicata would be attracted in the present case or if this single writ petition can be said to be competent or not. No doubt, the order passed by the Financial Commissioner is in different petitions, but it is a common order, where all the petitions filed before the Financial Commissioner have been disposed of together. Strictly speaking, it cannot be said that through the present writ petition only one order is under challenge. In fact, the challenge in the present writ petition is to all the eight orders passed in separate petitions by the Financial Commissioner which were disposed of by a common order. The petitioner was the common respondent in all the petitions and the points at issue were also common. The impugned order, as already noticed, has made reference to all the

petitions and the parties and, thus, one order was made for disposing of all the petitions. The present respondents were the petitioners before the Financial Commissioner and the present petitioner being the common respondent in all such petitions. In these peculiar facts of the case, it cannot be said that order under challenge is only in one petition and there is no challenge to the remaining orders passed by the Financial Commissioner in other petitions. The plea that present writ petition, thus, would be barred by res judicata appears to be an over stretched submission and view canvassed by the counsel for the respondents. It cannot be said that petitioner has failed to challenge any order passed by the Financial Commissioner in the petitions filed by different respondents. The order being common in all the petitions and having been challenged in the present writ petition making all the petitioners therein as the respondent party, the writ petition would be deemed to have been filed in all the cases and cannot be taken as a petition only in one case as contended before me by the counsel for the respondents. I am, thus, not inclined to accept this line of submission made by counsel for the respondents..

24. In this background, there will not be much necessity to consider the judgments relied upon by the counsel for the respondents. Even otherwise, the view canvassed by the counsel does not appear to be seeking support from the judgment referred to by him. In the case of Narhari (supra), the doctrine of res judicata was applied, where the High Court had dismissed one of the two appeals being time barred and then second appeal was dismissed by the High Court on the doctrine of res judicata. In this case, it was held that the principle of res judicata will not apply on the ground that it was necessary to file two separate appeals. As already held, necessity to file separate writ petitions, though may otherwise be ideal, has not been found to be essential in this case. Otherwise also, the High Court has not dismissed any writ petition, which would attract the doctrine of res judicata. The ratio of law laid down in this case apparently is not attracted in the present case. So would be the situation in Direct Recruits Class-II Engineering Officers'' Association''s case (supra). This was a case where doctrine of res judicata was held applicable to bar the filing of a writ petition before the Supreme Court where writ had been dismissed by the High Court. That is not the position in the present case. Similar principle is enunciated in the case of Parshotam (supra) and, thus, would not apply to the facts of the present case. Plea of res judicata would arise if there had been any finding by the High Court on any issue which is agitated again. To say that judgment passed by the Financial Commissioner in some of the cases is to be treated as final to urge the plea of res judicata before the High Court is certainly uncalled for and misconceived. Even Koshal Pal''s case (supra), relied upon by the counsel for the respondents, related to a third appeal from a decision of a second suit in the background that earlier appeal was decided by the appellate court. In this background, it is observed that the finding in the first suit would operate as res judicata. The plea of res judicata in this case apparently was found to operate in view of the decision in the earlier appeal, rather than the finding in the suit. The ratio of law laid down in Sheodan Singh''s

case (supra) also would not apply as it apparently was not a case where there was a common judgment or order passed. Rather this was a case where trial court has decided two suits having common issue on merits and two separate appeals therefrom were filed, one of these was dismissed on some preliminary ground. It was observed that trial court decision, thus, stood confirmed by the decision of the appellate court which will operate as res judicata and the appellate court must be deemed to have heard and finally decided the matter. In the present case, there is a common judgment and High Court has nor confirmed the view taken in any of the cases decided by the Financial Commissioner to justify the plea of res judicata. Even, the case of Central Coal Fields Ltd. (supra) would not be applicable to the facts of the present case, though it was a case of common judgment as in this case also appeal in one of the cases was dismissed being time barred and on this basis it was held that this decision of the appellate court would operate as res judicata in the other appeals. As already noticed, this Court has not passed any order in any of the petitions decided by the Financial Commissioner, which would attract the doctrine of res judicata. As already observed, Annexure P-6, is a common order passed in all the revision petitions, which has been challenged in this writ petition. This, cannot be treated as a challenge to one order and in fact is a challenge to all the orders commonly made in separate petitions filed before the Financial Commissioner. Even if it is taken for the sake of arguments that challenge is to one order and not others and these have become/final, still it is not understood as to how it will operate as res judicata for this Court to decide the present writ petitions. It is not possible to say that this writ petition is only against one order and, thus, not competent.

25. Plea apparently is more that writ is not competent, which is being argued on the basis of doctrine of res judicata. The writ petition otherwise cannot be thrown on technical grounds. This writ petition was admitted long ago. The respondents failed to file reply to the writ petition. In fact, the respondents woke up to notice that no reply has been filed in this case only at the time when the counsel for the petitioner has concluded his arguments. In the interest of justice, the respondents were permitted to file reply and they have, thus, filed written statement. It is at this late stage that they have raised this as a preliminary objection. If this reply had been filed in time and this objection taken, at that stage the petitioner was well within his rights to remove this technical defect by filing separate petition. This peculiarity would compel me to ignore this purely technical objection at this belated stage, which, otherwise is also found to be without substance. As was observed in the case of Mathura Prasad (supra), the doctrine of res judicata belongs to domain of procedure: It is also observed that it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a court finally between them, even though no question of fact or mixed question of law and fact and relating to the fact in dispute between the parties had been determined thereby. As already observed, there was no determination by this Court in regard to the decision

of the Financial Commissioner and in that sense, there would be no judgment passed by this Court, which would operate as res judicata for this Court to decide the present writ petition.

26. Accordingly, I am not much impressed with this line of submissions made by the counsel for the respondents that too at this belated stage where the petitioners have been deprived of their right to object to the ground of attack now made and, thus, would proceed to decide the writ petition on merits.

27. The facts in detail leading to passing of the impugned order, Annexure P-6, have been noticed above. Both the parties seem to be heavily relying upon the decision dated 11.9.1985 (Annexure P-2) of the then Financial Commissioner. There are fairly large areas where there are no differences between the parties in factual position. Noticed in brief, these are: that land in the hand of Ram Dass was declared surplus on 27.7.1961 in his individual capacity. He moved an application for correction of the same when District Collector, Gurdaspur vide his order dated 11.6.1964 recorded a finding that Thakar Dwara was the owner and not the Ram Dass. In addition to this, the proceedings conducted at the instance of Ram Dass declaring the land surplus were termed as null & void. In addition, a civil suit filed in this regard concerning the title of Thakar Dwara was also decreed on 1.6.1968. Both these orders were not put to any challenge and, thus, have become final. Still, some land was allotted in favour of the respondents on 31.12.1974 and notices were issued to Thakar Dwara u/s 9(1) under the Reforms Act. Petitioner Thakar Dwara had then filed a writ petition and the case was remanded back to Collector Agrarian for fresh decision. The Collector thereafter passed an order dated 13.10.1980 that the land was actually in the ownership of Thakar Dwara and that provisions of Section 14 of the Reforms Act would apply. The notices issued u/s 9(1) of the Reforms Act were, thus, quashed. Additional Commissioner took a contrary view on 26.6.1983 and held Mahant Ram Dass to be the owner in individual capacity and directed Collector to take possession of the land and then to give it to various allottees. This order was challenged both by petitioner Thakar Dwara and some of the respondents as well. Pursuant to this challenge, Financial Commissioner passed an order dated 11.9.1985 (Annexure P-2). This order is made the basis of attack by the petitioners whereas the respondents would heavily rely upon this order to sustain their prayer for purchase applications. Thus, this order would need analysis and proper dissection to see the import thereof.

28. The Financial Commissioner has held that the order dated 13.10.1980 passed by the Collector is perfect and so he has set aside the order passed by the Additional Commissioner. Financial Commissioner has also held that the property in dispute is owned by religious institution, i.e., petitioner Thakar Dwara. He has, thus, observed that the provisions of Section 14 of the Reforms Act will apply. Notices issued to the petitioners under Sections 9(1) and (2) of the Reforms Act were quashed. The Financial Commissioner also cancelled the allotment dated 31.12.1974 made in

favour of the respondents.

29. The factual position to the extent as noticed above is not in any dispute between the parties. The counsel for the petitioner would, thus, contend that earlier allotment having been cancelled in favour of the respondents and there being no surplus area determined in the hands of petitioner Thakar Dwara, the question of allowing purchase or allotment in the name of the respondents would not arise. They would accordingly say that impugned order permitting the purchase application filed by the respondents was clearly not maintainable. The respondents, on the other hand, would strongly rely upon a part of the order dated 11.9.1985 passed by the then Financial Commissioner, which, according to them had clearly ruled that Thakar Dwara would remain the land owner and the area determined as surplus under the Tenures Act would remain surplus. Reliance is also placed on the observations that all the rights and safeguards provided under the Tenures Act would continue to be applicable to the tenants etc. Respondents would term this part of the order dated 11.9.1985 (Annexure P-2) to be a finding given by the then Financial Commissioner, whereas petitioner would describe this to be a passing reference made by him and not the ratio or view , which can entitle the respondents to base their claims. Admittedly, both the parties have not challenged this order before any forum.

30. The allotment which was in favour of the respondents stood cancelled by order, Annexure P-2, which the respondents never challenged. The respondents have not been able to show any other allotment in their favour. Thus, as on date there is no allotment in favour of the respondents. The respondents subsequently filed an application for purchase, which has now been finally allowed by the Financial Commissioner and these orders are under challenge. The questions that would arise for consideration, thus, are: whether there is any land declared surplus in the hands of the petitioner, which can lead to allotment? It may also have to be seen whether the provisions of the Tenure Act would apply or that of the Reforms Act to attract the applicability of Section 14 of the Reforms Act. It is also to be seen if the area declared surplus in the hands of Mahant Ram Dass could ipso-facto be taken as a surplus area with the petitioner. Could the Financial Commissioner pass this order despite stay granted by this Court would be another incidental question, which may arise to test the validity of the order passed by the Financial Commissioner. These questions arise in the background that the purchase applications filed by the respondents having been allowed on 23.1.1991, which were set-aside by the Collector on 7.10.1991. The respondents thereafter had filed an appeal against this order before the Commissioner, who was of the view that no evidence was available to show that the land was declared surplus in the hands of petitioner-Thakar Dwara. The Commissioner accordingly dismissed the appeal filed by the respondents on 27.2.1998. Commissioner also held that at no point of time, the area was declared surplus in the hands of petitioner-Thakar Dwara. Accordingly, respondents were not held entitled to purchase the land. Finding further was that respondents had not

filed the purchase applications in time in terms of the provisions contained in the Reforms Act. The Financial Commissioner has then allowed the purchase applications on 14.5.2001 (Annexure P-6), which is under challenge. The respondents had filed Civil Writ Petition No. 2671 of 1983 before this Court against the order passed by Assistant Collector, who had directed them to file purchase application in the name of correct person in view of the Civil Court judgment dated 1.6.1968 referred to above whereby petitioner-Thakar Dwara was held to be the owner of the land in dispute. The purchase applications were accordingly rejected, which were challenged through Civil Writ Petition No. 2671 of 1983. While issuing notice of motion on 30.5.1983, this Court directed that the proceedings may go on but final order be not'' passed. While admitting this writ petition on 17.11.1983, the stay order dated 30.5.1983 was continued. This, as per the petitioner, was brought to the notice of the Financial Commissioner but he still passed the impugned order, Annexure P-6. Could he do so in view of the interim direction issued by the Court, may also be a question which may call for determination.

31. The counsel for the petitioner were quite vehement in their submissions that area having not been determined as surplus in the hands of petitioner-Thakar Dwara, allotment of land or purchase application would not be maintainable. This aspect is highlighted in the background that there is a positive finding recorded by the Financial Commissioner in his order dated 11.9.1985 that Thakar Dwara was the owner of the land in dispute. The counsel would also plead that even if the finding returned by the Financial Commissioner is taken to be correct for the sake of arguments, it would not mean that some area has been declared surplus in the hands of the petitioner, which could lead to allotment or entitlement of the respondents to file a purchase application. In other words, the counsel seem to contend that area declared surplus at the hands of Mahant Ram Dass can not be ipso facto taken as surplus area at the hands of petitioner-Thakar Dwara. On the other hand, the respondents have based their claim entirely on the part of order passed by Financial Commissioner dated 11.9.1985 (Annexure P-2), which the petitioner would describe to be a passing reference only. Counsel for the respondents was rather candid enough to concede that if this part of the order, Annexure P-2, is taken as a passing reference and not a ratio as such, then respondents would be left with no case to maintain the purchase application, which has now been allowed by the Financial Commissioner. That being the importance of this part of the order, it may need reproduction here for proper appreciation and analysts. Having held that the land belongs to Thakar Dwara, which is a religious institution of a public nature and that in view of Section 14 of the Reforms Act, nothing in Chapter 2 of Reforms Act will be applicable to it, the Financial Commissioner had cancelled the notices issued to the petitioner u/s 9(1) of the Reforms Act. Confronting with this legal and factual position, the respondents appear to have made plea in desperation before the Financial Commissioner to urge that consequences of this would be very harsh on them. Respondents pleaded that

they would find themselves summarily ejected. They would also suffer the consequences arising out of application filed by them u/s 18 of the Tenures Act for award of proprietary rights in their favour and they had accordingly not paid any rent. This position, as pleaded by them, would amount to re-settling them and the entire claim would also be rendered ineffective in view of Section 14 of the Reforms Act. In this background, the Financial Commissioner in his order dated 11.9.1985 observed that question of ejectment was not an issue in the said proceedings before him and then went on to state:

...It may, however, be mentioned in passing that most of the apprehensions of the tenants seem to be born out of a misunderstanding of the provisions of the law. It is true that in view of Section 14 of the Punjab Land Reforms Act the land in question cannot be utilized under the Punjab Land Reforms Act. However, this would not affect the position of the tenants or allottees under the Punjab Security of Land Tenures Act. The provisions of the Punjab Security of Land Tenures Act would continue to be applicable and these do not allow for any exemption to religious institutions from determination of surplus area. Thus, the Thakurdwara would remain the land owner and the area determined as surplus area under the Punjab Security of Land Tenures Act would remains surplus. All the rights and safeguards provided under the Punjab Security of Land Tenures Act would continue to be applicable to the tenants. While the allotments made in 1974 under the Punjab Land Reforms Act shall stand extinguished, the allotments made under the Punjab Security of Land Tenures Act would be unaffected. I notice that the Collector in his order dated 11.6.1964 had said that the allotments, if any, made would be null and void in view of the Government instructions of 1960. This view taken by the Collector appears doubtful. Although the Government instructions envisaged that no allotments would be made on the surplus land of religious institutions, these instructions were not issued under or in pursuance of any provision of the Punjab Security of Land Tenures Act. If an allotment had in fact been made in accordance with the provisions of the Punjab Security of Land Tenures Act and the Rules made thereunder, it would be open to the tenant to argue that the allotment would continue to be valid notwithstanding the aforesaid Government instructions.

32. Is this a ratio or just a passing reference would be a question requiring decision. Incidentally, it has also to be seen whether this view expressed by the Financial Commissioner would stand the legal scrutiny or not. Merely because the Financial Commissioner has made some observation, may be against law, would not lead to creating any right in favour of any party if otherwise it is not found tenable under law.

33. As already noticed in the fore-going paragraphs, the respondents have not been able to show any allotment in their favour except the one made on 31.12.1974 under the Reforms Act. This allotment was cancelled by the Financial Commissioner as would reveal from the part of the order reproduced above. Accordingly, the

observation that allotment made under the Tenures Act would be unaffected would not lead to anything in favour of the respondents as they have not been able to show any allotment in their favour under the Tenures Act. The only allotment in their favour was under the Reforms Act, which was set-aside by the Financial Commissioner, leading to a situation that there is no order of allotment in favour of the respondents. Otherwise, the Financial Commissioner had clearly observed that in view of Section 14 of the Reforms Act, the land in question could not be utilized under the Reforms Act once it was held to be in the ownership of Thakar Dwara. There is a contradiction seen in the above part of the order passed by the Financial Commissioner. Once Thakar Dwara was held to be the owner, the applicability of Section 14 could not have been wished away. The observation that Thakar Dwara would remain land owner of the area determined as surplus area under the Tenures Act would remain as surplus can not be termed legally and factually sound view. Once the finding was that a person whose land was declared surplus was not the owner and owner was somebody else, the land declared as surplus in the hands of a subsequent owner could not have been said to be ipso facto surplus with him. Even otherwise, while making this observation the Financial Commissioner appears to have clearly failed to take into account the effect of order dated 11.6.1964. The land was declared surplus in the hands of Mahant Ram Dass on 27.7.1961. This order was corrected on an application moved by Mahant Ram Dass. District Collector, vide his order dated 11.6.1964, then recorded a finding that Thakar Dwara was the owner and Ram Dass could not be treated to be as owner of the land in dispute. Not only that the District Collector further held that all the proceedings conducted at the instance of Ram Dass were declared to be null and void. Thus, the area which was declared surplus in the hands of Ram Dass on 27.7.1961 stood set-aside and quashed on 11.6.1964. There was, thus, no area as surplus in the hands of Mahant Ram Dass or petitioner-Thakar Dwara. Concededly, the order dated 11.6.1964 has not been challenged by the respondents till date. Accordingly, the observations made by the Financial Commissioner that Thakar Dwara would remain land owner and the area declared surplus under the Tenures Act would remain surplus is obviously made ignoring the order dated 11.6.1964, which was allowed to acquire finality. Coupled with this is a fact that no allotment had been made under the provisions of the Tenures Act in favour of the respondents.

34. Otherwise also, I have considered this part of the order passed by the Financial Commissioner with deep thought. This part of the order appears to have been made just in the passing to remove some apprehensions, which were expressed before the Financial Commissioner on behalf of the respondents and were not essential for deciding the Us by the Financial Commissioner, which would entitle the parties to make a claim on that basis. Even if this is taken to be an order, still this will not reflect the correct legal position. Besides it was apparently made while ignoring the factual position. There was no challenge made before the Financial Commissioner against the order dated 11.6.1964. Accordingly, the observation made by the

Financial Commissioner to say that the view taken by the Collector on the basis of Government instructions of 1960 is doubtful, was really uncalled for. He was not even sure if there was any allotment in favour of the respondents under the Tenures Act. That appears to be the reason for him to make an observation if an allotment had in fact been made in accordance with the provisions of the Tenures Act, then it would be open for the tenants to argue that the allotment would continue to be valid, notwithstanding the aforesaid Government instructions. It has now been found that in fact there is no allotment in favour of the respondents under the Tenures Act. If that be so, the allotment now can only be made under the provisions of the Reforms Act and so Section 14 of the Act, which otherwise has been held applicable, would stand in the way of tenants for allotment. Section 14 clearly provides that notwithstanding any judgment, decree or order of any Court or authority, the provisions of this Chapter shall not apply to lands belonging to any religious or charitable institution of public nature in existence immediately before the date of commencement of this Act.

35. Another factor which is equally important and can not be ignored is that the respondents have filed application on 1.5.1986 u/s 15 of the Reforms Act, except in one case where the purchase application was filed on 3.3.1966. Even in this case, on 22.11.1972, the tenant-respondents were directed to file fresh application against true owner-Thakar Dwara as per the Civil Court decree. Filing of this application under the Tenures Act would also not make any difference as it has been viewed that there was no surplus land at the hands of Thakar Dwara and that the tenants in this case were also asked to file this application against true owner i.e. Thakar Dwara. In this background, would it now be possible for the respondents to say that their claim for allotment be considered under the Tenures Act. This would also lead to another incidental question which has been pressed by the petitioner with sufficient vehemence that these applications filed by the respondents were barred by limitation laid down u/s 15 of the Reforms Act. Plea is that this application could have been filed within one year from the date of commencement of the Act as provided u/s 15 of the Reforms Act. It is emphasized that the word used in this regard is "shall" to say that this application filed by the respondents was clearly barred in view of the statutory time bar laid down in the Section. This provision is stated to be mandatory. Counsel for the petitioner would also point out that as per Section 28 of the Reforms Act, the provisions of the Tenures Act and the Pepsu Tenancy Act in so far as these are inconsistent with the provisions of the Reforms Act stand repealed. From this, it is emphasized that the legislature in its wisdom had repealed the provisions of Tenures Act, which are inconsistent and the provisions of Section 18 of the Tenures Act, being inconsistent with the provisions of Section 15 of the Reforms Act, where period of limitation is stipulated for exercising the right to purchase. Plea is that the provisions of Section 18 to this extent would stand repealed. The counsel accordingly seems to contend that on 1.5.1986, the date when this application was filed, would have to be treated under the Reforms Act as

provisions of Section 18 of the Tenures Act stood repealed. As already noticed, the respondents had indeed filed an application u/s 15 of the Reforms Act. The respondents, however, would plead that still this application was filed within time i.e. within one year on the ground that their right to file such an application arose only once their cancellation was set-aside by Financial Commissioner through his order dated 11.9.1985, Annexure P-2. Till then, the respondents had an allotment in their favour and were not required to file any application for purchase. Moment they learnt that their allotment stand extinguished, they filed an application on 1.5.1986, which is within one year from 11.9.1985, the date from which the cause for them in this regard arose. The respondents accordingly would plead that this application be treated as having been filed within one year in terms of Section 15 of the Reforms Act.

36. This may need an analysis of the provisions of Section 15 of the Reforms Act, to see if the period of limitation as prescribed statutorily is subject to relaxation in any manner or not. The relevant proviso of Section 15 reads "the procedure for purchase of such land shall be as is specified hereinafter and the period of limitation for exercise of such a right shall be one year from the date of commencement of this Act. The heading of the Section reads "Saving of Certain rights of tenants to purchase land". Section 15 provides that notwithstanding anything contained in this Act, a tenant who was entitled to purchase the land comprised in his tenancy u/s 18 of the Punjab Law or Section 22 of the Pepsu Law, as the case may be, immediately before commencement of the Act shall be entitled to purchase such land from the land owner on the same terms and conditions as were applicable immediately before such commencement. This right of course is created subject to certain restrictions laid down in the provisos. The second proviso relates to period of limitation for exercise of right, prescribing one year as limit from the date of commencement of the Act. The date of commencement of the Act is 2.4.1973. The allotment was made on 31.12.1974, which was cancelled on 11.9.1985. The petitioner had a right to file a purchase application between April 1973 to 31.12.1974. They did not file any application for purchase as provided u/s 15. The period of one year would expire on 2.4.1974. On that day, there was no allotment in favour of the respondents, which would entitle them to urge that there was no cause for them to file an application within this period. The allotment only followed on 31.12.1974. The stand taken by the petitioner that they got a cause to file this application only on 11.9.1985, thus, may not be acceptable in fact and law. Even if the case pleaded by the respondents is placed at best pedestal, the extension of this time, as sought by the respondents, also appears to be little far fetched. Proviso (ii) to Section 15(1) appears to be prohibitory in nature. No provision is made for extending the period of limitation as laid down in the Section. Not only the word "shall" as used in this regard would convey the significant intention of the legislature to provide this period as the outer limitation but this intent can further be discerned from the fact that there is no provision made for extension of this time.

If the intention of the legislature had been to provide this period as a flexible one, which is subject to extension, it was bound to be reflected and in the absence of such intent, it is not possible to hold that this period of limitation, as laid down in Section 15, is open to be extended at will even for sufficient reasons. Counsel for the respondents has not been able to cite any precedent or law where a provision made and worded in the form as proviso to Section 15 would call for extension of a period statutorily provided for doing of an act. The right to purchase granted under this Section is restricted by this proviso statutorily provided in the Section itself. It can, thus, be said that its operation can not be waived. It would appear impermissible for any of the authorities under the Act to do away with the mandate of this proviso. Its terms are not negotiable. Reference here can be made to the view expressed by the Division Bench of this Court in Bhag Singh and Anr. v. Financial Commissioner and Ors. 1989 F.L.J. 541. This was a case where subsequent purchaser has raised a plea that on the death of old land owner, the entire case has become open and the surplus area had to be re-determined in the hands of his heirs and so the benefit thereof could be derived by the vendees too. Emphatic plea was that surplus area proceedings would now reflect on the proceedings u/s 15 of the Reforms Act and may even wipe them off. The Division Bench, however, held as under:
...As we read the provision, the new Act is utterly intolerant of the intermediators and that is why it has made incumbent on the tenant to apply for purchase within one year from the date of the commencement of the Act and never thereafter. Care has otherwise been taken of the ones who failed to avail of the opportunity under the statutory scheme for utilizing the surplus area.

37. The Court in this case was dealing with the prayer of the petitioners (subsequent vendees) who wanted that the proceedings in Section 15 application should be stopped by issuance of a writ of prohibition against the Assistant Collector, Ist Grade. The Court went on to hold:

...this we are not prepared to do in view of the non obstante clause occurring in Section 15, which says "notwithstanding anything contained in this Act". The paramountcy of Section 15 is so patent that it overrides all other Sections in the Act. What was an enabling right in the old Act is now a positive and assertive right and the tenant in the exercise of that right is absolutely safe even if the big landowner were to die during the pendency of the proceedings. This being the nature of provision, there will not be any scope of enlarging the limitation as prescribed under the Act. This has to be strictly followed.

38. Learned Counsel for the petitioners referred to Sri Ram Saha Vs. State of West Bengal and Others, to urge that no word or provision is to be considered redundant or superfluous which is the cardinal rule of construction in interpreting the provisions of statute. In this regard only, reference can be made to Sankar Ram and Co. Vs. Kasi Naicker and Others, . In Union of India (UOI) and Others Vs. Braj Nandan Singh, , the Supreme Court held that it is well settled principle in law that the Court

can not read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature and the language employed in the statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of legislature enacting it. (See: Institute of Chartered Accountants of India v. Price Waterhouse and Anr. AIR 1998 S.C. 74). The term of this Section, thus, does not appear to me to be of a nature where the period of limitation as prescribed can be extended as pleaded.

39. The view taken by the Financial Commissioner and pursued by the counsel for the respondents that such right to file application u/s 18 of the Tenures Act would rescue his cause can not also be accepted as concededly on the date of application, the provisions of Tenures Act stood repealed. As a matter of fact, there was no application of purchase pending u/s 18 of the Tenures Act and the application was ultimately filed u/s 15 of the Reforms Act on 1.5.1986. This view apparently was expressed by Financial Commissioner in his order dated 11.9.1985 in a misconceived appreciation of fact that the order of surplus land declared in the hands of Mahant Ram Dass, still was in existence and has not been challenged. Financial Commissioner completely forgot to take into account the order dated 11.6.1964, which had acquired finality and had set-aside all the proceedings and the order dated 27.7.1961 declaring the land surplus. On this basis only, it would not be possible to accept the view formulated and placed before this Court that the land declared surplus in the hands of Mahant Ram Dass can be taken to be ipso facto having been declared surplus with the petitioner Thakar Dwara.

40. Coming to the impugned order, Annexure P-6, which has been passed in the background of order, Annexure P-2, can not, thus, be sustained. Collector, Gurdaspur, in his order dated 13.10.1980 and the Commissioner in his order dated 22.2.1998 had rightly observed that there was absolutely no evidence brought on the file to prove that the land in dispute was declared surplus with petitioner No. 1. The respondent-tenants had also failed to establish through any cogent and reliable evidence that the suit land was ever allotted to them by any competent authority. The Commissioner had rightly observed that if there was any allotment of land in favour of the respondents, nothing would have prevented them from filing purchase application immediately. These orders passed by the Collector and Commissioner were set-aside by the Financial Commissioner without much justification. The Financial Commissioner appears to have not applied his mind properly to the facts and the legal position. In a way, this is apparent from the tact that he reproduced the entire applications/petitions filed by the parties as their arguments in the impugned order. The respondent tenants had primarily argued that the land declared surplus in the year 1961 was not challenged and had become final, which is factually not correct. They, in fact, had not challenged the order dated 11.6.1964, which had set-aside this order declaring the land surplus with Mahant Ram Dass. Having reproduced these arguments, the Financial Commissioner found

that the respondents were entitled to purchase this land u/s 18 of the Tenures Act. He failed to take notice of the fact that this application was even filed under the provisions of the Reforms Act. While allowing this application, the Financial Commissioner relied upon an order passed in the year 1961, declaring the land surplus in the hands of Ram Dass and thereafter by referring to the observations made by the then Financial Commissioner in his order dated 11.9.1985 held that this land would remain surplus in the hands of Thakar Dwara. The Financial Commissioner in his order dated 11.9.1985 had completely ignored the order dated 11.6.1964, which mistake percolated into the order passed by the Financial Commissioner and now impugned in the writ petition. Both failed to take notice of the fact that the order dated 27.7.1961 had been set-aside by District Collector on 11.6.1964 and, thus, the view that land declared surplus in the hand of Ram Dass would remain so with the petitioner-Thakar Dwara is a misconceived appreciation of fact and of law. In this background, the Financial Commissioner was also not justified in allowing this application by relying on the provisions of Section 18 of the Tenures Act, which stood repealed. As already noticed, the Financial Commissioner was not justified in taking the view that Section 18 would still be available especially when the proceedings under the Tenures Act had not been finalised and the order cancelling the land declaring surplus had been set-aside, which was never challenged. Till date, no land has been declared surplus in the hands of the petitioner.

41. Accordingly, the impugned order can not be sustained and the same is set-aside for the detailed reasons mentioned above. Consequently, Civil Writ Petition Nos. 19981 of 2001, 1627, 2945 and 2997 of 2002 filed by petitioner-Thakardwara are allowed.

42. Civil Writ Petition Nos. 15811 and 15812 of 1999 have been filed by the tenants to challenge the order of their eviction passed by the Assistant Collector Ist Grade dated 27.5.1993, Annexure P-2. This order was upheld by the Collector and the appeal filed by the tenants was rejected on 17.1.1994 (Annexure P-3). Thereafter, the Commissioner recommended to the Financial Commissioner for acceptance and settling-aside of these orders on 28.4.1995. Financial Commissioner, however, rejected the reference and upheld the order passed by the Assistant Collector and the Collector. This order was made subject to the outcome of the purchase applications filed by the tenants u/s 18 of the Tenures Act, which were then pending. The petitioners have accordingly challenged orders, Annexures P-2, P-3 and P-5. Similar is the position in another connected writ petition.

43. The case set up by the tenants in these petitions is that their purchase application was allowed by the Assistant Collector, which was set-aside in the appeal. Against these orders, R.O.R. No. 674 of 1998 was stated to be pending before the Financial Commissioner, when this writ petition was filed. Pleading that the landlord-Thakardwara was not receiving rent, they accordingly filed an

application u/s 14-A (iii) for directing the respondent-Thakardwara to receive rent. On this application, the order of ejectment had followed, leading to passing of orders, Annexures P-2, P-3 and P-5. Since the main writ petition No. 19981 of 2001, whereby the order passed by the Financial Commissioner allowing the applications of purchase was impugned by petitioner-Thakardwara has been allowed and the order passed by the Financial Commissioner set-aside, the right to purchase this land by tenant petitioners in the present cases can also not be sustained. In this view of the matter, no interference in the impugned order, directing ejectment of the petitioners is called for. The arguments advanced by the petitioners that ejectment order could not have been passed in these cases as the land owner-Thakardwara has only right to. recover the rent and nothing more, can not be accepted. In fact, the whole basis of this argument is not made out as per the finding returned above that no land has been declared surplus in the hands of petitioner-Thakardwara.

44. Accordingly, Civil Writ Petition Nos. 15811 and 15812 of 1999 are dismissed.

45. Four Civil Writ Petition Nos. 6911 to 6914 of 2002 were filed to challenge the order, whereby recovery of rent from the tenants was directed. The tenant-petitioners pleaded that application filed by them for purchase of the land were pending adjudication and if these were to be allowed, then they will become owner of the land as far as from the year 1973-74. Accordingly, the tenants pleaded that they could not be directed to pay the rent during the pendency of the decision on the purchase applications filed by them. The plea by the tenants in these petitions are that the purchase applications filed by similarly situated tenants had been allowed by the Financial Commissioner on 14.5.2001 and accordingly the same course was likely to be followed in the case of the tenant-petitioners in these cases as well. Their purchase applications had in fact been dismissed on technical ground of having been filed with some delay and in this back-ground the Financial Commissioner had directed the Assistant Collector, Ist Grade to decide the purchase applications in the cases of these tenant-petitioners on merits vide his order dated 14.5.2001.

46. Since the order dated 14.5.2001 impugned by petitioner-Thakardwara has been set-aside, the advantage which the petitioners in these petitions were wanting to draw would no more be available. 63. Since the right of these tenant-petitioners to purchase the land under their tenancy would be covered by the decision in the present writ petition, these writ petitions would also deserve to be dismissed and it is so ordered.

47. As a result of above discussion, Civil Writ Petition Nos. 19981 of 2001, 1627, 2945 and 2997 of 2002 are allowed and the impugned orders, allowing the purchase applications passed by the Financial Commissioner are set-aside. For the reasons mentioned above, Civil Writ Petition Nos. 15811 and 15812 of 1999 and 6911 to 6914 of 2002 are dismissed.