Rajinder Parshad and anr. Vs. the Punjab State and ors.

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Court : Punjab and Haryana

Decided On : Nov-08-1965

Reported in : AIR1966P& H185

Judge : Mehar Singh,; R.P. Khoshla,; Harbans Singh,; P.C. Pandit and; H.R. Khanna

Acts : Punjab Security of Land Tenures Act, 1953 - Sections 2(8) and 5(1); Constitution of India - Article 226; Tenancy Law

Appeal No. : Letters Patent Appeal No. 150 of 1961 in Civil Writ No. 154 of 1960

Appellant : Rajinder Parshad and anr.

Respondent : The Punjab State and ors.

Advocate for Def. : L.D. Kaushal, Deputy Adv. General, ; Jagmohan Lal Sethi and;

Advocate for Pet/Ap. : C.L. Aggarwal and; P.N. Aggarwal and; M.B. Singh, Ad

Disposition : Appeal allowed

Judgement :

Mehar Singh, J.

1. The two appellants Rajindar Prashad and Khub Chand, are owners of 795 acres of agricultural land, the whole of it under tenants, in village Odian, Tehsil Fazilka of Ferozepur District. On April 15, 1953, the Punjab Security of Land Tenures Act, 1953 (Punjab Act 10 of 1953), hereinafter to be referred as 'the Act', came into force. It gave protection to tenants against ejectment except on grounds specified in Section 9. Clause (i) of Sub-section (1) of section 9 reads--

'Notwithstanding anything contained in any other law for the time being in force, no land-owner shall be competent to eject a tenant except when such tenant is a tenant on the area reserved under this Act or is a tenant of a small land-owner.'

In section 2(3) the expression 'permissible area' has been defined. The definition reads--

' 'Permissible area' in relation to a landowner or a tenant, means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres.'

The appellants owned more than the permissible area. Sub-section (1) of section 5

says that

'any land-owner who owns land in excess of the permissible area, may reserve out of the entire land held by him in the State of Punjab as landowner, any parcel or parcels not exceeding the permissible area by intimating his selection in the prescribed form and manner to the Patwari of the estate in which the land reserved is situate or to such authority as may be prescribed .. .. ',

and there is a proviso to this sub-section of which only Clause (b) is material, which reads

'Provided that in making this reservation he shall include his areas owned in the following order:-- * * *(b) area under self-cultivation at the commencement of this Act other than the reserved area.'

So a land-owner making reservation under Sub-section (1) of Section 5 has to include in it area under his self-cultivation at the commencement of the Act, that is to say, area under self-cultivation on April 15, 1953. Subsection (3) of section 5 provides that intimation of reservation was to be given within six months from April 15, 1953. On October 15, 1953, on a prescribed form, Exhibit P. 1, the two appellants made reservation, under section 5(1), of 79 acres, 6 Kanals, and 6 Marlas, equivalent of 58 standard acres, out of the total land under their ownership. They had the right to reserve 60 standard acres, but their reservation was of 58 standard acres, thus being 2 standard acres short of the statutory area that they had a right to reserve. Respondents 6 to 39 are tenants on that reserved area under the appellants. They thus became liable to ejectment under section 9(1) (i) of the Act.

2. On September 28, 1956, the appellants filed 34 applications against respondents 6 to 39 under section 14-A of the Act, on the basis of the ground of ejectment in section 9(1) (i), for their ejectment from 58 standard acres area reserved by them under section 5(1) of the Act. The applications were of course resisted by respondents 6 to 39. It appears that all the applications were consolidated and evidence was recorded in one application, applicable to the decision of all.

3. The only evidence that was recorded was of two witnesses, Om Parkash, Patwari of the Patwari Circle in which village Odian is situate, and Ram Rakha Mal, Mukhtar-i-am of the appellants. The tenants-respondents, in cross-examination, put the entries in the Khasra Girdawari, Exhibit D. 1, from Kharif 1951-Rabi 1952 to Kharif 1954-Rabi 1955 to the Patwari with regard to four fields Nos. 958, 1757, 1778, and 1780. The whole argument before the revenue authorities, the Financial Commissioner, the Commissioner, the Collector, and the Assistant Collector, respondents 2 to 5, has centred round those field numbers and the entries in the Khasra Girdawari in regard to the same and the statement of the Patwari based on those entries in that respect. There were other matters which came in the evidence of the Patwari as also the Mukhtar-i-am of the appellants, but those ceased to be of consequence by the time the case was before the Commissioner, respondent 3. So for the purposes of this appeal all that needs to be taken into consideration is the Khasra Girdawari, Exhibit D. 1, in which are the entries about cultivation and crop sown in those four field numbers, and the statement of Patwari Ram Parkash with regard to the same.

3A. The question before the revenue authorities was whether the appellants were in self-cultivation of those four field numbers at the commencement of the Act, that is to

say, on April 15, 1833? In the Punjab Land Records Manual, Chapter IX, instruction 9. 1 provides, in the absence of any special order, that inspection of each harvest shall commence in the case of Kharif from October 1, and in the case of Rabi from March 1. Unless the State Government appoints other date by a notification for any local area 'agricultural year' commences on June 16 in any year according to section 3(14) of the Punjab Land Revenue Act, 1887 (Act 17 of 1887). It is common knowledge that in the normal course Kharif crop is not sown until about or after June 16 in any year, though the inspection of Kharif crop commences on and from October 1 in that year. The reason why inspection takes place a few months after the sowing, is obvious for by then the crop grows sufficiently and undeniably admits of inspection. Every revenue officer, who has had any experience of field work in the matter of crop inspection, knows as a fact that Kharif crop is not sown until about or after June 16 in a particular year.

Column 2 in the Khasra Girdwari, Exhibit D. 1. shows the name of the owner of the land, and column 3 concerns the name of the cultivator. In Exhibit D. 1 the appellants are shown as owners in column 2. In column 3 the entry is 'Khud Kasht Maqbuza Malkan,' of which the English translation is 'self-cultivation, in possession of owners'. This is the entry with regard to all the four fields Nos. 958, 1757, 1778, and 1780. Column 5 concerns the kind or type of land, and the entry as to those four field numbers is 'Gair Mumkin Johri', of which the English translation is 'unculturable pond.' Columns 6, 7 and 8 are of crop cultivation in Kharif 1951-Rabi 1952, and the entry is again 'Gair Mumkin Johri', which means that no crop was sown in any of those four fields numbers in that year. Columns 9, 10 and 11 relate to crop in Kharif 1952-Rabi 1953. In Kharif 1952 field No. 958 is again shown 'Gair Mumkin Johri', but in Rabi 1953 it is 'Gair Mumkin Haddarori', of which the English translation is 'unculturable bone deposit area'. Fields Nos. 1757 and 1780 are shown in both crops as 'Gair Mumkin Johri'. In regard to field No. 1778 the entry in Kharif 1952 is '2 Kanals Chari (fodder) sown by Sucha Singh', respondent 20, and the rest as before 'Gair Mumkin Johri'. In Rabi 1953 the entry is again 'Gair Mumkin Johri' of the whole area of this field number. So in Kharif 1952 and Rabi 1953 except for 2 Kanals of fodder crop sown by Sucha Singh respondent 20 in field No. 1778, the rest of those four field numbers remained as before with no crop cultivated in the same by anybody, and in fact the entry is 'unculturable land in the shape of pond' in regard to all the fields numbers, except that in regard to field No. 958 in Rabi 1953 it is shown 'unculturable bone deposit area'. Columns 12 to 14 are of Kharif 1953-Rabi 1954. With regard to fields Nos. 1757, 1778, and 1780, the entry continues to be 'Gair Mumkin Johri' for both crops. In Rabi 1954 the entry is same for field No. 958. But in Kharif 1953 Bajra is shown to have been sown in 1 Kanal of this ,held number by Hazara Singh respondent 18. There is also entry of another 2 Kanals area under crop, but that is not decipherable and possibly may read as cotton crop. Columns 15 to 17 concern Kharif 1954- Rabi 1955. In regard to fields Nos. 1757, 1778, and 1780, the entry continues to be the same as 'Gair Mumkin Johri'. As to field No. 958 in Kharif 1954, it is shown under Gowara crop, the whole of it, sown by Hazara Singh respondent 18. The entry in regard to Rabi 1955 also seems to be under crop by the same respondent. It is clear that between Kharif 1951 and Rabi 1955 fields Nos. 1757, and 1780 have all the time been shown as unculturable pond. This land was never cultivated by anybody. The entry in column 3, saying 'Khud Kasht' (self-cultivation) , with regard to those two field numbers is utterly meaningless, for, where the details of the crop are required to be given, no crop is shown there, and instead the land is shown to have remained lying vacant as unculturable pond.

The entry in column 3 by itself has no meaning for it gains meaning only with reference to entries in subsequent columns showing crop sown for each harvest season whether Kharif or Rabi. In regard to those two field numbers, no crop having been entered to have been sown in the same, the entry in column 3 of self-cultivation of the owners is a contradiction in terms and is factually against the only entry or entries which show what crop was sown in the land. No crop having been sown in the land, there was no question of land having been under self-cultivation. It was in fact an unculturable pond. In so far as field No. 1778 is concerned, the position between Kharif 1951 and Rabi 1955 is exactly the same except for one crop of Kharif 1952, during which only two Kanals area out of the total area of this field number was under fodder crop sown by Sucha Singh respondent 20. No part of this field number even is shown in this Khasra Girdawari to have been cultivated and sown by the appellants. Even if the entry of Kharif 1952 is to be taken into consideration, it establishes cultivation of a part of this field number by a tenant of the appellants, namely, Sucha Singh respondent 20, and not self-cultivation of that area by the appellants. As regards the remaining field No. 958, the entry from Kharif 1951 to Rabi 1953 is again unculturable pond or bone deposit area, so that during that period the land was not cultivated by anybody and was in fact unculturable being under pond or bone deposit area.

The position of the entry in column 3 showing the appellants in self-cultivation or Khud Kasht is meaningless in the face of the entry in the crop columns which alone can show whether land was or was not cultivated and by whom. In Kharif 1953 this field number was under the cultivation of Hazara Singh respondent 18, again a tenant of the appellants, it was not under cultivation by the appellants and could not be described as under self-cultivation. The position reverts in Rabi Rabi 1954 to unculturable pond. In Kharif 1954 and Rabi 1955 it is again shown under cultivation of Hazara Singh respondent 18. This field number was never cultivated by the appellants. It remained either unculturable pond or bone deposit area or cultivated by one of the appellants' tenants, namely, Hazara Singh respondent 18.

In section 2(9) of the Act there is definition of the expression 'self-cultivation' and it says that

' 'self-cultivation' means cultivation by a land-owner either personally or through his wife or children, or through such of his relations as may be prescribed, or under his supervision.'

No part of the four field numbers was ever thus in the self-cultivation of the appellants. The whole of the area was unculturable pond or bone deposit area except that two Kanals of fodder crop was sown by Sucha Singh respondent 20 in field No. 1778 in Kharif 1952, and Kharif crop was sown in field No. 958 in Kharif 1953, and crop was sown in Kharif 1954 and Rabi 1955 by Hazara Singh respondent 18.

As stated, both Hazara Singh respondent 18 and Sucha Singh respondent 20 are tenants of the appellants. No part of the area of any of the four field numbers was in the self-cultivation of the appellants, and only a small area, as shown, was in cultivation of two tenants of the appellants, which was thus not in the self-cultivation of the appellants. The entry in the Khasra Girdawari, Exhibit D. 1, has to be read as a whole and particularly the entry with regard to the cultivation has only meaning with reference to the columns which show cultivation of crop for each separate harvest. If, as in this case, there was no cultivation of crop in greater part of the area of four field

numbers, the entry of self-cultivation in column 3 has no meaning. In regard to the small area that was cultivated by the two tenants of the appellants, the entry as 'self-cultivation' of the appellants is not according to the actual crop sown and by the person who sowed it. No revenue officer experienced in crop inspection and entries in Khasra Girdawaries in regard to crop inspection could possibly have read the entries in the Khasra Girdawari, Exhibit D. 1, with regard to those four field numbers as under self-cultivation of the appellants.

No judicial mind instructed and trained in judicial approach can read the entries about those four field numbers as self-cultivation of the appellants. I have taken the whole period from Kharif 1951 to Rabi 1955 to emphasise that the area of the four field numbers has never been under the self-cultivation of the appellants. Actually what is to be seen, as already stated, is what was the position in regard to cultivation of those four field numbers on April 15, 1953. It has already been stated that Kharif crop in any year is sown about or after June 16. So Kharif 1953 crop was sown about or after June 16, 1953. This was apparently after April 15, 1953, thus after the commencement of the Act.

The harvest current at the commencement of the Act, that is to say, on April 15, 1963, was Rabi 1953. Rabi crop is harvested in April. When the Act commenced on April 15, 1953, Rabi 1953 was being harvested. So it is this harvest of Rabi 1953 that was current on April 15, 1953. It is this harvest alone which is relevant for a finding whether or not the four field numbers, under consideration, were under cultivation, and if so, under whose cultivation. The entries in the Khasra Girdawari, Exhibit D. 1, are clear that field No. 958 was 'Gair Mumkin Haddarori', and the remaining three field numbers were 'Gair Mumkin Johri'. So all the four field numbers were unculturable, one as bone deposit area and the other three as pond. Not one of those field numbers was cultivated by anybody, let alone the appellants. Those field numbers having been unculturable, and in fact, not cultivated, in Rabi 1953, the entry in column 3 of Exhibit D. 1, as has already been pointed out, that the same were under the self-cultivation of the owners of the land, is obviously not in conformity with the column showing crop sown in Rabi 1953. The statement, as I have already pointed out, has no meaning. In my opinion, no Revenue Officer experienced in the revenue work could ever possibly read all the four field numbers in Rabi 1953 as under self-cultivation of the appellants. This is the only harvest, as I have said, that is relevant, though it has been shown on detailed reference to harvests from Kharif 1951 to Rabi 1955 that not one of those field numbers was under the self-cultivation of the appellants. A small area, as explained in Kharif 1952, a crop before Rabi 1953, was cultivated by Sucha Singh respondent 20, and another small area was cultivated in Kharif 1953, a crop after Rabi 1953, by Hazara Singh respondent 18. The two respondents are tenants of the appellants. Even those small areas, though not relevant, were cultivatted by the tenants and were not under self-cultivation of the appellants. This is the state of entries in the Khasra Girdawari, Exhibit D. 1. The statement of Patwari Ram Parkash is based on entries in this Khasra Girdawari, Exhibit D. 1. In the examination-in-chief, he stated that on the date the application, Exhibit P. 1, for reservation of land was made by the appellants, there was no area of land under their self-cultivation, but there was some area owned by them which was 'Gair Mumkin Chhappar', which means it was unculturable.

In cross-examination he said, field No. 958, which was 'Gair Mumkin Khal' meaning unculturable water channel became culturable in Kharif 1953, a harvest, as pointed out, after Rabi 1953 and thus after the commencement of the Act, and it was

cultivated by Hazara Singh respondent 18, a statement which is exact repetition of the entry in the Khasra Girdawari. Then he proceeded to stay that in Rabi 1953, this field No. 958 was in possession of and under cultivation of the owners. This statement follows entry in column 3 of the Khasra Girdawari, Exhibit D. 1, but does not conform to the real entry in it which shows whether any crop was or was not sown in this field number. As stated, that entry shows that no crop was sown in this field number in Rabi 1953 and it was unculturable bone deposit area. He admitted that Khasra Girdawari, Exhibit D. 1, was prepared by him. In re-examination, he stated that field numbers 1779 and 1780 are unculturable pond and thus not capable of cultivation, though in Kharif 1952, Sucha Singh respondent 20 sowed fodder crop in two Kanals area out of field No. 1779. As to field No. 958, he said that it is unculturable pond and thus not capable of cultivation, but in Kharif 1953, Hazara Singh respondent 18-cultivated it under the owners. Lastly, as regards field No. 1757 he said, it is not capable of cultivation. This statement, in re-examination by him, is exact reproduction of the state of affairs to be found in the entries in the Khasra Girdawari, Exhibit D. 1, and it is consistent with his earlier statement in examination-in-chief that on the dale of the application Exhibit P. 1, for reservation of land by the appellants, there was no area under their self-cultivation, though there was some area in their possession which was unculturable pond.

In the cross-examination, the rest of his. statement is again, what is stated in the Khasra Girdawari, Exhibit D. 1, except as to field No. 958, with regard to which he stated that in Rabi 1953, it was in the possession and cultivation of the owners. It has been shown that this statement only partially depicts the entry in the Khasra Girdawari, Exhibit D. 1, in column 3, and does not depict the real entry for cultivation in column 10 of this document concerning Rabi 1953. In re-examination, the witness corrected himself to bring his statement in conformity with the entry in the Khasra Girdawari, Exhibit D. 1, even with regard to this field number concerning Rabi 1953. The statement of this Patwari, as such, is of no more consequence than the entries in the Khasra Girdawari, Exhibit D. 1. It discloses, state of affairs with regard to none of those four field numbers anywise different than the state of affairs as shown in the Khasra Girdawari Exhibit D. 1. So the evidence before the revenue authorities was: (i) that not one of those field numbers was under the self-cultivation of the appellants, (ii) that some small area in harvest before Rabi 1953 was cultivated by tenant Sucha Singh respondent 20 and another small area was cultivated by another tenant Hazara Singh respondent 18 in a harvest after Rabi 1953, and (iii) that in Rabi 1953, the crop current in April 1953 and on April 15, 1953 not one of those field numbers was cultivated by anybody, whether the appellants or their tenants. This was the state of the evidence which was considered first by the Assistant Collector, 1st Grade, Fazilka, who was seized of the applications of the appellants for eviction of the tenants-respondents 6 to 39.

4. The Assistant Collector in his order of March 31, 1958, came to the conclusion that

'Ram Parshad Halqa Patwari has stated that Khasra Nos. 958, 1757, 1779 and 1780 were in the cultivating possession of the plaintiffs and the entries in the Khasra Girdawari indicate self-cultivation. These Khasras have not been included in the details of land reserved by the plaintiffs and consequently have not been mentioned in the reservation form, x x x From the evidence of Patwari and from the perusal of entries in the Khasra Girdawari it is sufficiently clear that Khasra Nos. 958,1757 1779, and 1780 are in the cultivating possession of the plaintiffs, and as such the plaintiffs should have included these in their reserved area. I find that the

determination of this issue is of great importance before the proceedings can continue. Unless the reservation is correct and is in accordance with statutory requirements of section 5(1) the suits cannot completely lie against the respondents. The reservation in this case has not been proper as the entire self-cultivated area had not been included by the plaintiffs in the land reserved by them. Consequently I hold that the reservation made by the plaintiffs is both bad in form and bad in law.'

On this view he proceeded to dismiss all the applications of the appellants.

It is evident that the Assistant Collector did not consider cultivation of those field numbers at the commencement of the Act, that is to say, on April 15, 1953. He has read entries in the Khasra Girdawari indicating self-cultivation of the appellants, but, as already explained, that is not so. lie has read the evidence of the Patwari in the same light and that also is not so.

The appellants went in appeal before the Collector. It was contended before him on behalf of the appellants that those field numbers were not culturable because the same have been shown as 'Gair Mumkin' in excerpt from Khasra Girdawari, Exhibit D. 1, and it was further pointed out to him that those field numbers were only shown 'Maqbuza Malikan' (in possession of owners) and as such were not under their self-cultivation. The Collector said in his order of June 26, 1958,

'I have gone through contents of Exhibit D. 1. and find that in column 3 the entry reads ----'Khud Kashat-Maqbuza Malikan' (self-cultivation-in possession of owners). It, therefore, follows that these numbers were under self-cultivation of the landlords. Section 5(1) (b) does not make any distinction between culturable and non-culturable area. In fact I find that field No. 958 was cultivated by a tenant during Kharif 1953. Similarly 2 Kanals area from field No. 1779 was cultivated by one Sucha Sing during Kharif 1952. There was thus no bar to cultivation; it appears to me that the landlords had intentionally omitted cultivation of this land and also did not include it in their reserved area obviously with a view to retain this area under their possession in addition to the permissible limit of 30 standard acres.'

The Collector has taken into consideration, to reach this conclusion, two irrelevant entries, (a) that two tenants of the appellants cultivated parts of those field numbers in Kharif 1952 and Kharif 1953, whereas the relevant harvest is Rabi 1953, and (b) that the appellants intentionally omitted cultivation of those field numbers so as to retain the area over and above the permissible limit of 30 standard acres. Both considerations are utterly irrelevant to the question whether at the commencement of the Act (on April 15, 1953) the land of those field numbers was in the self-cultivation of the appellants or not.

It is obvious from what has been stated by the Collector that the same were not in the self-cultivation of the appellants, for he imputes motive to them for not having cultivated the 'same to keep the land over and above the permissible limit of 30 standard acres. In addition, he reads only column 3 of the Khasra Girdawari, Exhibit D. 1, a most surprising approach on the part of a Revenue Officer of the status of a Collector. He does not refer to the columns of the Khasra Girdawari which show cultivation of crop in any harvest and those are the only columns which are evidence of cultivation. Later he says this in his order--

'It has also been argued by the learned counsel for the appellants that field Nos. 958,

1757, 1779, and 1780 were under the possession of the tenant during Kharif 1953 and as such the landlords were not bound to get these field numbers included in the reserved area. Section 5(1) (b) lays down that the area under self-cultivation will be area which was under the cultivation of the landlords at the time of the commencement of this Act. The Punjab Security of Land Tenures Act was enforced on the 15th April, 1953, and entries in respect of Kharif 1953 were made by the Patwari during the month of October, 1953, when the Kharif Girdawari was done by him. It is, therefore, clear that the area will be taken as under the self-cultivation of landlords in view of entries existing at the time of enforcement of this Act.'

Here again the Collector is proceeding on consideration of an irrelevant entry relating to harvest sown about a couple of months after the commencement of the Act, some time about the middle of June, and inspected by the Patwari in October 1953, whereas the relevant harvest was the harvest of Rabi 1953 which was being harvested in April, 1953. He adverts to April 15, 1953, the date of the commencement of the Act, and yet in reaching his conclusion he took into consideration harvest sown some two months after that date. How he reaches the conclusion that those field numbers were in the self cultivation of the appellants,, cannot be understood for, as shown, there was no evidence of this before him. The appeal of the appellants failed.

The appellants then went in revision before the Commissioner. On behalf of the appellants it was urged that the area of those field numbers was unculturable pond, that the Collector had misread the definition of self-cultivation, that the Assistant Collector and the Collector had misconstrued the revenue records, and that, even if the whole area comprised in those field numbers was included in the reserve area, the total would still be less than the permissible area of 30 standard acres. It was pointed out that the officers below had acted without jurisdiction or, in any case, with illegality and material irregularity in the exercise of jurisdiction in the circumstances, and in this respect reliance was placed on Joy Chand Lal Babu v. Kamalaksha Chaudhury, AIR 1949 P. C. 239, in which, at p. 242, their Lordships observed that

'There have been a very large number of decisions of Indian High Courts on section 115, to many of which their Lordships have referred. Some of such decisions prompt the observation that High Courts have not always appreciated that although error in a decision of a subordinate Court does not by itself involve that the Subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under Sub-section (c), nevertheless, if the erroneous decision results in the surbordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-section (a) or sub-section (b), and sub-section (c) can be ignored.'

In spite of the Assistant Collector having ignored the crop entry for the harvest of Rabi 1953 in the Khasra Girdawari, Exhibit D. 1, and the statement of the Patwari in this respect, and relied upon material not relevant, and in spite of the Collector having proceeded to his decision on irrelevant considerations such as entry in the Girdawari of Kharif 1953 and motive of the appellants in not cultivating the land, and, lastly, in spite of the absence of any evidence to support the conclusion that the four field numbers were under the self-cultivation of the appellants, the Commissioner came to the conclusion that those two officers acted with competence and jurisdiction and that there could be no interference in revision with those orders. The power of revision of the Financial Commissioner under section 24 of the Act is the same according to section 84 of the Punjab Tenancy Act, 1887 (Punjab Act 16 of 1887) as

that of the High Court under section 115 of the Code of Civil Procedure, and Hinder Sub-section (3) of Section 84 of Punjab Act 16 of 1887 the Commissioner having called the record of a particular case from a certain revenue officer, if he is of the opinion that the proceedings taken or the order made should be modified or reversed, he has to submit the record with his opinion on the case for orders of the Financial Commissioner. Obviously in doing so he has to take into consideration the revisional powers of the Financial Commissioner according to section 115 of the Code of Civil Procedure, and make recommendation accordingly. It was with this in view that Joy Chand Lal Babu's case AIR 1949 PC 239 was cited before the Commissioner. But leaving that aside, he came to the conclusion that the decisions of the Assistant Collector and Collector were within jurisdiction and there could be no interference with a finding of fact that those four field numbers were in the self-cultivation of the appellants on the date of the commencement of the Act. There is no doubt that this is a finding of fact. But what was for the consideration of the Commissioner was whether a decision of fact given as that on irrelevant considerations and on no evidence was not a case of refusal to exercise jurisdiction and hence called for interference in the applications of the appellants.

The applications were dismissed. The appellants then took the matter in revision before the learned Financial Commissioner. On the side of the appellants reference was made to Keshardeo Chamria v. Radha Kissen Chamria, AIR 1953 SC 23, in which at p. 28 their Lordships approved the dictum of the Privy Council in Joy Chand Lal Babu's case AIR 1949 PC 239. It was contended before the learned Financial Commissioner on behalf of the appellants that the four field numbers are recorded 'Gair Mumkin Johri' in the Khasra Girdawari and that, even if the area of those field numbers was added to the reservation made by the appellants, the total would still be well within the proper limits of permissible area of 30 standard acres. The learned Financial Commissioner proceeded to observe--

'Now it has been clearly found by the Assistant Collector and the Collector that the areas of Khasra Nos. 958, 1757, 1779, and 1780 were shown as 'Khud kasht Maqbuza' under the present petitioners. This is clearly shown in Exhibit D. 1 and this was the actual position at the commencement of the Punjab Security of Land Tenures Act, 1953. However, this area was not included by the present petitioners in making their reservations. So the reservations were clearly irregular and not according to law.'

The revision petition was dismissed by his order of April 24, 1959. All that may be stated at this stage is that even the learned Financial Commissioner confines himself to column 3 of the entry in the Khasra Girdawari, Exhibit D. 1. He ignores the only entries that are relevant for the purpose of self-cultivation from columns 5 to 17, and in particular the entry in column 10 with regard to the the crop in Rabi 1953. The position before him as to the absence of evidence in regard to self-cultivation of those field numbers by the appellants and irrelevant factors which prevailed with the revenue authorities below to reach conclusion on that question of fact was the same as before the Commissioner. In spite of the decisions in the cases of Joy Chand Lal Babu AIR 1949 PC 239 and Keshardeo Chamria, AIR 1953 SC 23 both the learned officers refused relief to the appellants.

5. It was after that that on January 23, 1960, nine months after the order of the Financial Commissioner of April 24, 1959, the appellants filed a writ petition under Articles 226 and 227 of the Constitution seeking to have the order of the Financial

Commissioner quashed. The grounds for that taken by the appellants were (i) that the reservation had been made by them under Section 5(1) of the Act, to which no objection was taken by any authority at the time, and because of any omission in the form of reservation the whole of the reserved area could not be declared void for there is no provision in the Act to that effect, (ii) that the four field numbers in question are not 'land' within the meaning of the definition given in Sub-section (8) of Section 2 of the Act, (iii) that the area of those four field numbers was never recorded as in the self-cultivation of the appellants, (iv) that there is no evidence that that area was being cultivated by the appellants, as on the date of the commencement of the Act the area was un-culturable pond (Gair Mumkin Johri), and (v) that the Act does not provide for forfeiture of the entire land reserved merely because of non-inclusion of small area as of those four field numbers in question.

In paragraph 20 of the petition the appellants explained that after a good deal of persuasion they were successful in persuading four of the tenants, respondents 13, 24, 30 and 38, to relinquish their rights in the reserved area. Those tenants agreed to file affidavits to that effect. The appellants considered that the remaining respondents were also likely to be induced to have 30 standard acres of reserved area. Applications were made to the Assistant Controller to record the statements of the four tenants who had agreed to file affidavits to relinquish their tenancy rights from the area reserved by the appellants, but the applications were rejected. On that account the attitude of the tenants stiffened and it became impossible for the appellants to persuade them to relinquish their possession over the land. This was by way of an explanation of delay of nine months in filing the petition. There was one return filed by respondents 6 to 8, 10 to 12, 15, 19, 20, 23, 25, 26, 31, 32 and 39, in which two preliminary objections were taken that in the case of 34 different ejectment applications one petition did not lie and that the petition was liable to be dismissed because it was filed after nine months of the impugned order of the Financial Commissioner. Otherwise those respondents in the return denied the claim of the appellants on the grounds on which it has been based.

A separate return was filed on behalf of respondents 1 to 5, the State of Punjab, the Financial Commissioner, the Commissioner, the Collector and the Assistant Collector, by the Collector of Ferozepur, respondent 4.

The facts as given by the appellants in their writ petition are substantially accepted in this return, but there is a denial of the grounds. It is stated that the reservation of land by the appellants was not according to section 5 (1) (b) of the Act because it left out self-cultivation area of the four field numbers already referred to, and absence of any objection immediately to the form of reservation does not help the appellants, that the area of those four field numbers even though shown as 'Gair Mumkin Johri-Khud Kasht-Maqbuza Malkan' is 'land' within the scope of Section 2 (8) of the Act as some of it was brought under cultivation even by the respondents-tenants, that the area of those field numbers was correctly shown as self-cultivation of the appellants, and that the reservation having been not according to the statute, could not affect the tenants' right to remain on the land.

In spite of this stand for the respondents, it is necessary to refer to the exact manner in which the affidavit of the Collector, respondent 4, refers to the question of self-cultivation of those field numbers by the appellants. In paragraph 12 of the return it is stated--

' . . . . so admittedly some portion of it was actually brought under cultivation by some of the respondents (tenants) and as such the whole of the land presumably could have been brought under cultivation and was as such correctly shown as 'self-cultivation, possession with owner.' '

Here is an attempt in the return to explain away the orders of the revenue officers on the question of fact of self-cultivation of those field numbers by the appellants. The reply is significant for it practically admits that the finding is based on no evidence.

Again in paragraph 18 (m) it is stated --'Even though the land is ' Gair Mumkin Johri' it was shown as ' Khud Kasht, Maqbuza Malkan', and some of it was brought under cultivation even by the respondents (tenants).'

This also refers to no cultivation of any area of those field numbers by the appellants but only refers to cultivation of some area out of the total area of those four field numbers by some of the respondents (tenants).

In regard to the explanation of delay by the appellants, it is stated in paragraph 20 of the return that

'It is correct that four such applications, were filed as rejected, as no other action could be taken on them under any of the provisions of the Security of Land Tenures Act. No reservation could be ordered beyond the provisions of section 5 of the Security of Land Tenures Act. If the tenants have relinquished the possession of the land, the question of changing their attitude should not arise.' The appellants alleged in their petition that by the orders of respondents 2 to 5 their fundamental right to have the land under their self-cultivation by eviction of the tenants-respondents was affected, and this has been denied in the returns made both by some of the tenants and by respondents 1 to 5. The appellants filed a replication. In that they explained that after the order of the Financial Commissioner, respondent 2, of April 24, 1959, efforts were made to induce the tenants to agree to the reservation and to leave the reserved area for the appellants' exclusive cultivation and use. During the continuance of the negotiations about the compromise by November 16, 1959, four of the tenants agreed to relinquish the area in their possession. They filed affidavits in the Court of the Collector at Fazilka, Mr. R.D. Joshi, to that effect, but that officer summarily rejected the applications and refused to proceed on the basis of those affidavits. The effect of that was that the tenants started threatening the appellants with purchase of the whole of the appellants' land under Section 18 of the Act. One such application was actually made on January 2, 1960, by one of the respondents. It was in these circumstances that the delay of nine months in making an approach to this Court against the impugned order of respondent 2 was explained.

6. When the petition came for hearing before Dua J., two preliminary objections were taken by the respondents before the learned Judge. One objection, which the learned Judge repelled, was that a joint petition by the appellants impugning 35 different ejectment petitions was not competent. The second objection, which prevailed with the learned Judge, was that the appellants have approached the Court with inordinate delay and laches in filing the petition from the date of the impugned order of respondent 2. The learned Judge rejected the explanation given by the appellants in the petition for the delay of nine months. He found that no details have been furnished to the Court showing when and what precise efforts were made to make a settlement with the tenants and he pointed out that even in the replication the only

reference is that on November 16, 1959, four tenants agreed to relinquish possession of the area under them, but the Collector rejected their affidavits. The learned Judge, as stated, came to the conclusion that the delay of nine months in filing the petition remains unexplained, and on consideration of the affidavits on behalf of the appellants, both with the original writ petition and with the replication, I am not prepared to differ with the learned Judge on this matter. In any case, this Court gives consideration to time spent in seeking remedies according to law, but the time of nine months taken by the appellants was not spent in that manner. The case has to proceed on this basis that the delay of nine months in filing the petition remains unexplained by the appellants, in other words, they have given no adequate and satisfactory explanation for that delay. On this ground alone the learned Judge dismissed the petition of the appellants on April 11, 1961.

7. The appellants have filed this appeal under clause 10 of the Letters Patent against the judgment of the learned Single Judge dismissing their petition. The appeal came for hearing before Dulat and Mahajan JJ., on April 7, 1965. With regard to the ground of dismissal of the petition, Dulat J. (with whom Mahajan J. concurred) observed ----

'I should have thought that the grant of a writ under Article 226 of the Constitution being a discretionary relief, which can appropriately be refused on the ground of unexplained delay, the exercise of such discretion by a learned Single Judge of this Court was hardly open to question in a Letters Patent appeal such as this.'

But the learned counsel for the appellants referred to Gurmej Singh v. The Election Tribunal, Gurdaspur, (1964) 66 Pun LR 589 : (AIR 1964 Punj 337) (FB), to support his contention that delay alone in a petition like this, when the appellants claim is on merits perfectly good, cannot be a ground for refusing them relief and that they are entitled to show that their case is good on merits, so that, if they succeed in that, the ground of delay will disappear. The learned Judge then cites this observation of Dua J. in Gurmej Singh's case (1964) 66 Pun LR 589 : (AIR 1964 Punj 337)

'If, therefore, this Court after hearing the petitioner admits the writ petition and issues a rule nisi and at the hearing after actually adjudicating upon the merits of the controversy comes to a positive conclusion in favour of the petitioner, that may also be a factor which, to some extent, may reasonably weigh against the refusal to exercise discretion in granting relief to the aggrieved party. '

The learned Judge then says that that observation lends support to the argument of the learned counsel for the appellants and points out that

'if taken to its logical conclusion, it would be a great departure from the established practice that delay is by itself good ground in law justifying this Court's refusal to exercise its jurisdiction under Article 226 of the Constitution. It is not easy to accept the suggestion that the Full Bench intended to make such a departure and Mr. Kaushal on behalf of the respondents strenuously urges that the decision of the Full Bench can be explained on the short ground that the learned Judges were not satisfied that delay in that particular case was unexplained. In the judgment of the Full Bench, however, there is no such conclusion recorded. One of the learned Judges of the Full Bench (Khanna J.) disagreed with the view of the majority and held that delay was a good ground for refusing to grant relief to an aggrieved party if delay was unexplained.'

It was in these circumstances that the learned Judges referred the appeal to a larger Bench so that the basis and the implication of the Full Bench decision in Gurmej Singh's case (1964) 66 Pun LR 589 : (AIR 1964 Punj 337 FB) are satisfactorily considered and settled. This is how this appeal has come before this Bench of five Judges.

8. There is a preliminary objection by the learned Deputy Advocate-General on behalf of the first five respondents that the judgment of the learned Single Judge dismissing the petition of the appellants under Article 226 on the ground of delay is not so within the meaning and scope of the word ' judgment ' as used in clause 10 of the Letters Patent. This objection was not taken by him before the Division Bench when the appeal was first heard by the learned Judges, but the objection has been considered all the same. A number of cases, on both sides, of this Court and of various other High Courts have been cited on the meaning of the word ' judgment ' as in Article 133 of the Constitution, but I am not referring to those cases because there are direct cases dealing with the meaning and scope of that word as used in clause 10 of the Letters Patent and because a Full Bench of this Court in Kapur Singh v. Union of India, (1957) 59 Pun LR 331: ((S) AIR 1957 Punj 173 KB) while considering the meaning and scope of that word in Article 133 has considered that the cases falling under Clause 10 of the Letters Patent may be taken apart.

So I am confining the consideration of this objection on the meaning and scope of the word ' judgment ' in clause 10 of the Letters Patent as considered in cases dealing with that clause, corresponding to clause 15 of the Letters Patent of what were previously Presidency High Courts, alone.

In Justices of the Peace for Calcutta v. Oriental Gas Co., 8 Beng LR 433, Sir Richard Couch, C. J. observed:

' We think that ' judgment ' in clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final, or preliminary, or interlocutory, the difference between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined. Both classes are provided for in Clauses 39 and 40 of the Charter. An order, such as that before us, which only authorizes a proceeding to be taken for the determination of the question between the parties, cannot be, considered a judgment. It is, however, said that this Court has already put a wider construction upon the word ' judgment ' in clause 15 by entertaining appeals in cases where the plaint has been rejected as insufficient, or as showing that the claim is barred by limitation, and also in cases where orders have been made in execution. These however, are both within the above definition of a judgment, and it by no means follows that, because we hold the order in the present case not to be appealable, we should be bound to hold the same in the cases referred to. For example, there is an obvious difference between an order for the admission of a plaint and an order for its rejection. The former determines nothing, but is merely the first step towards putting the case in a shape for determination. The latter determines finally so far as the Court which makes the order is concerned that the suit, as brought, will not lie. The decision, therefore, is a judgment in the proper sense of the term. '

If rejection of a plaint showing that the claim is barred by limitation is a ' judgment ' under Clause 10, the analogy of the dismissal of the present petition of the appellants

on the ground of delay is very close.

In T.V. Tuljaram Row v. M.K.R.V. Alagappa Chettiar, ILR 35 Mad 1 (FB), Sir Arnold White, C. J. laid down this test in this respect:

' The test seems to me to be not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not in my opinion, a judgment with in the meaning of the Letters Patent. * * * * * * * Speaking generally I think the word 'judgment' means any 'final order, decree or judgment' within the meaning of those words as used in section 12 of the English Judicature Act, 1875. An order made on an application which is interlocutory in point of form may be a judgment within the meaning of section 15 of the Letters Patent. On the other hand I am not prepared to say as was held in 8 Beng LR 433 and in Sonbai v. Ahamedbhai Havibhai, 9 Bom HCR 398, it must be a decision which affects the merits by determining some right or liability. I think the decision may be a judgment for the purposes of the section though it does not affect the merits of the suit or proceeding and does not determine any question of right raised in the suit or proceeding.'

A Full Bench of the Lahore High Court in Firm Shaw Hari Dial and Sons v. Sohna Mal Beli Ram, AIR 1942 Lah 95 (FB) after considering not only the two cases of the Calcutta and Madras High Courts, just referred to, but also a number of other cases of the Lahore High Court and of the other High Courts, did not reconcile the tests laid down by the two learned Chief Justices of those High Courts, and held that whether an order amounts to a 'judgment' within the scope of clause 10, must be considered on the facts and circumstances of each case, and the tests propounded in those two cases served as a guide, and the learned Judges further observed that they agreed entirely with the remarks in Ruldu Singh v. Sanwal Singh, ILR 3 Lah 188 : (AIR 1922 Lah 380 (2)) that the best test propounded so far is the test laid down in T. V. Tuljaram Row's case ILR 35 Mad 1 (FB). In Ruldu Singh's case ILR 3 Lah 188 : (AIR 1922 Lah 380 (2)) the two cases of the Calcutta and Madras High Courts were considered by the Division Bench and Sir Shadi Lal, C. J., with whom Harrison J. concurred, after referring to the test laid down by Sir Arnold White C. J. in T. V. Tuljaram Row's case ILR 35 Mad 1 (FB) said

'It will be observed that this definition furnishes a better and a surer test for deciding the question whether an adjudication is or is not a judgment than that given by Sir Richard Couch in the case of 8 Beng LR 433.'

Those two cases have also come for consideration of their Lordships of the Supreme Court in Asrumati Debi v. Rupendra Deb, AIR 1953 SC 198, and State of Uttar Pradesh v. Dr. Vijay Anand Maharaj, AIR 1963 SC 946, and their Lordships did not consider it necessary in those cases to attempt to reconcile those decisions. It has been pointed out in those cases that the Lahore High Court prefers and follows the view of the Madras High Court. However, in Asrumati Debi's case, AIR 1953 SC 198, after reference to the passage cited from the judgment of Sir Richard Couch, C. J. above, their Lordships make this observation

'It cannot be said, therefore, that according to Sir Richard Couch every judicial pronouncement on a right or liability between the parties is to be regarded as a 'judgment', for in that case there would be any number of judgments in the course of a suit or proceeding, each one of which could be challenged by way of appeal. The judgment must be the final pronouncement which puts an end to the proceeding so far as the Court dealing with it is concerned. It certainly involves the determination of some right or liability, though it may not be necessary that there must be a decision on the merits. This view, which is implied in the observation of Sir Richard Couch, C. J. quoted above, has been really made the basis of the definition of 'judgment' by Sir Arnold White, C. J. in the Full Bench decision of the Madras High Court to which reference has been made : ILR 35 Mad 1 (FB). According to White, C. J., to find out whether an order is a 'judgment' or not, we have to look to its effect upon the particular suit or proceeding in which it is made. If its effect is to terminate the suit or proceeding, the decision would be a ' judgment' but not otherwise. As this definition covers not only decisions in suit or actions but 'orders' in other proceedings as well which start with applications, it may be said that any final order passed on an application in the course of a suit, e.g., granting or refusing a party's prayer for adjournment of a suit or for examination of a witness, would also come within the definition. This seems to be the reason why the learned Chief Justice qualifies the general proposition laid down above by stating that 'an adjudication on an application, which is nothing more than a step towards obtaining a final adjudication in the suit, is not a judgment within the meaning of Letters Patent'. '

In Mohammed Felumeah v. S. Mondal, AIR 1960 Cal 582, the learned Judges have observed that the test of a ' judgment' as laid down by the Full Bench of the Madras High Court in T. V. Tuljaram Row's case ILR 35 Mad 1 (FB) is only a variant of the one laid down by the Calcutta High Court in 8 Beng LR 433, and that the test laid down in the latter case is hot exhaustive.

The judgment of the learned Single Judge terminated finally the proceedings in the writ petition of the appellants under Article 226 in this Court and they have no other remedy against the orders of the revenue authorities, which orders, according to them, affect their fundamental right to the land in question, and, in any case, certainly affect their statutory right under the provisions of the Act to have the land, detailed in their applications, by eviction of the tenants, for their self-cultivation. This Court follows the view of the Lahore High Court and so considering the observations of their Lordships in Asrumati Debi's case AIR 1953 SC 198 and the observations of the learned Judges in Mohammed Felumeah's case AIR 1960 Cal 582 it is the test laid down by the Madras High Court in T. V. Tuljaram Row's case ILR 35 Mad 1 (FB) that is to be applied to the judgment of the learned Single Judge. On that test the judgment is a 'judgment' within the scope of clause 10 of the Letters Patent. In Nanak Chand v. State of Uttar Pradesh, AIR 1955 All 165, a petition under Article 226 of the Constitution was dismissed on the ground of availability of alternative adequate remedy, a ground somewhat akin to the ground of delay, and Raghubar Dayal J. (Roy J. concurring) held that the dismissal of the petition terminated the proceedings taken in the High Court and the decision was a 'judgment' within the scope of clause 15 of the Letters Patent.

The learned Deputy Advocate-General has referred to Mt. Premkaur v. Banarsi Das, AIR 1933 Lah 881, in support of his contention that an order made in the exercise of discretion, as is obviously the order dismissing the appellants' petition under Article 226 on the ground of delay, is not a 'judgment' from which an appeal is open under

Clause 10, but what Sir Shadi Lal C. J. said in that case was

' This Court, while not going so far as to hold that an order dealing with a matter of discretion is not appealable, has laid down that though an appeal is competent, the fact that the making of the order was a matter of discretion may be a good ground for refusing to exercise the appellate jurisdiction.'

This observation of the learned Chief Justice does not support the argument advanced by the learned Deputy Advocate-General. The preliminary objection does not succeed.

9. The power and jurisdiction conferred on a High Court under Article 226 is wide, with no limitations provided on it in the Article; it is a discretionary jurisdiction conferred for ends of justice, and the attribute that the discretion is a judicial discretion inheres in it. Delay, or laches, which is delay accompanied by negligence, is one of the factors that come in for consideration in the exercise of such a judicial discretion. In this Court there are no rules providing any defined period of limitation within which an application under Article 226 is to be made. In State of Madhya Pradesh v. Bhailal Bhai, AIR 1964 SC 1006, their Lordships while considering a contention of the learned counsel that the provisions of the Limitation Act do not apply to the granting of relief under Article 226, observed --

'It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable. '

Same view has been expressed by their Lordships in Narayani Debi Khaitan v. State of Bihar, Supreme Court Civil Appeal No. 140 of 1964, Dated 22nd September 1964 (SC). The learned counsel for the appellants has contended that the appellants have six years' period of limitation for a declaration as to possession of the land, and, in any case, one year's period of limitation under Article 14 of the Limitation Act to question in a Civil Court the validity of the order of the Financial Commissioner, respondent 2. and that the appellants have filed their petition within nine months of that order. Even so, according to the dictum of their Lordships, within the period of limitation, in the Limitation Act, if applicable to the claim, the Court may consider delay unreasonable.

In considering the effect of delay in Narayani Debi Khaitan's case, Civil Appeal No. 140 of 1964 dated 22nd of September 1964 (SC) their Lordships have. further observed that in the matter of what delay is to be considered unreasonable in a given case, no hard and fast rule can be laid down. This Court while exercising judicial discretion in considering the matter of delay in a petition under Article 226 does not apply rule of the thumb in a particular case. To grant or not to grant relief under that Article is the exercise of judicial discretion of the Court, and, in the exercise of such discretion, where a matter of delay comes in for consideration in a petition under Article 226, a question immediately arises whether dismissal of the writ petition on that ground alone is or is not the exercise of its discretion judicially. An answer to that question can only be given having regard to the, facts and circumstances of a particular case. Delay of a couple of months in the facts and circumstances of a

particular case may be unreasonable, but not so in another case where delay is even longer. If no attention is paid to the facts and circumstances of the case, there is no other guidance to the exercise of judicial discretion in this respect, and then the decision may savour of the application of the rule of the thumb. So that the necessity (a) to decide whether delay for a certain period in a given petition is or is not unreasonable, and (b) to exercise Court's judicial discretion in the decision of the petition, brings in the consideration of the facts and circumstances of the case, and this is the manner in which ends of justice are served.

A considerable number of reported cases have been cited on both sides at the hearing pertaining to various High Courts, including this Court, on the question of delay. Particular emphasis has been laid on the side of the appellants on some of those cases in which it has been held that where what is claimed is infraction of a fundamental right, the question of delay is immaterial. The distinction thus made between the infraction of a fundamental right and of a statutory right does not seem to be supported by the recent decisions of their Lordships of the Supreme Court, to which decisions presently reference is going to be made. I do not want to burden this judgment with quotations from the various cases cited of various High Courts on the matter, not because I do not show respect to the views and opinions of the learned Judges in those cases, for I hold the same in profound respect, but because those cases proceed on their own particular facts and also because in my humble opinion the matter is concluded by the recent decisions of the Supreme Court. In AIR 1964 SC 1006, their Lordships observed--

' It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the Court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get back, the Court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution. '

In that case a delay of little less than three years but within the period of three years prescribed for the claim by the Limitation Act was not held unreasonable delay.

In N.P. Tripathi v. Rammanorath Lal, Supreme Court Civil Appeals Nos. 255 and 256 dated 8th September 1964 (SC), delay in the filing of petition under Article 226 was again of about two years and nine months. Their Lordships observed

'It is true that in exercising its writ jurisdiction under Articles 226 and 227 the High Court should be slow to condone delay made by the parties in moving it under its prerogative jurisdiction, but if on considering the relevant facts the High Court comes to the conclusion that in a given case the delay made by a party is not fatal to its securing relief in the High Court, we would clearly be reluctant to interfere with its decision. '

In Narayani Debi Khaitan's case Supreme Court Civil Appeal No. 140 of 1964, dated 22nd of September 1964 (SC) the delay was of more than two years. The High Court was of the opinion that proceedings for acquisition of land of the appellant were invalid and her dispossession illegal because of the invalidity of a notification in that respect, which was rendered invalid because of not falling within the scope of Section 17(4) of the Land Acquisition Act. Their Lordships were inclined to agree with that. The High Court dismissed the petition under Article 226, in spite of that, merely on the ground of delay. Their Lordships affirmed the judgment of the High Court but taking into consideration a number of other factors arising out of the facts and circumstances of the case along with the delay in the making of the petition. Their Lordships observed

'It is well settled that under Article 226 the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ.

* * * * * * *No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.

* * * * * * * * *while exercising its jurisdiction under Article 226, it is for the High Court to consider whether as a result of the laches on the part of the petitioner, or as a result of other relevant circumstances, it should not allow its writ jurisdiction to be invoked .. .. .. '.

These three decisions of their Lordships, in my opinion, answer the question with regard to how a matter of the delay is to be considered in the exercise of the High Court's discretionary jurisdiction under Article 226. It is clear that the jurisdiction is discretionary, it is to be exercised judiciously, delay is one of the factors that conies in for consideration in the judicial exercise of that discretion, and, as wide jurisdiction has been conferred for ends of justice, while exercising judicial discretion this Court will consider delay or laches on the part of a petitioner in the relevant facts and circumstances of the case. Their Lordships have clearly observed that no hard and

fast rule can be laid down in this respect. So it would not be correct to say that merely looking at the question of some delay, the petition must be dismissed off-hand, nor would it be correct to say, as an abstract proposition, that, ignoring delay, the petitioner can insist upon the decision of the case on merits. Such inflexible rules cannot be laid down and what this Court does is, when considering a petition under Article 226, that it takes into consideration the facts and circumstances of the case and delay is one of such circumstances in exercising its judicial discretion for ends of justice in the matter of decision of the petition. The supreme consideration for the exercise of the power and jurisdiction under Article 226 is the ends of justice, and that provides the approach to the exercise of judicial discretion in the matter, which embraces consideration of various aspects of the controversy, and no limitations as rigid rules or propositions, such as referred to above, can be a fetter to that. This I conceive is the manner in which the question of delay is to be dealt with in the exercise of power and jurisdiction under Article 226.

10. The next question for consideration is in what circumstances and on what basis can there be interference in an appeal under clause 10 of the Letters Patent from a judgment of a learned Single Judge exercising his judicial discretion to dismiss a petition under Article 226 on the ground of delay?

In Gurmej Singh's case 66 Pun LR 589: (AIR 1964 Punj 337) (FB) the learned Single Judge was of the opinion that the order of the Election Tribunal was erroneous and was liable to be quashed, but he dismissed the petition under Articles 226 and 227 on the ground of delay. An appeal under Clause 10 was ultimately heard by a Full Bench consisting of Capoor, Dua and Khanna JJ. The majority judgment is delivered by Dua J. (Capoor J. concurring). The learned counsel for the respondent in that case had urged that the learned Single Judge having declined to grant relief in his discretion, this Court should not, on appeal, interfere. This is what Dua J. observes on the argument--

'Discretion, as is well settled on high authority, has to be exercised judiciously and not arbitrarily; it is legal and qualified, not fanciful or absolute; it must further the legislative purpose and cause of justice; it pertains to the sphere of what a Judge ought to do and not what he likes to do. On the facts and circumstances of this case, after holding the impugned order to be erroneous, the only proper and judicial exercise of discretion, if I am say so with all respect, was not to decline relief to the petitioner on the ground of delay alone. It may also be pointed out that the statute creating the right of appeal imposes no restriction on the appellate jurisdiction in regard to orders requiring exercise of judicial discretion, it being open to the appellate Bench to pass any order which, in its opinion, the learned Single Judge should, in law, have passed.'

In that case there was a delay of about five months in the appellant challenging the order of the Election Tribunal dismissing his recriminatory petition as barred by time.

In Rammanorath Lal's case, Supreme Court Civil Appeals Nos. 255 and 256 of 1962 D/-8-9-1964 (SC) their Lordships point out that the High Court should be slow to condone delay made by the parties moving it under prerogative jurisdiction. The test providing basis for interference in appeal is laid down by their Lordships in Narayani Debi Khaitan's case Supreme Court Civil Appeal No. 140 of 1964, D/-22-9-1964 (SC). Their Lordships observe:

'.. .. if in the exercise of its discretion the High Court refused to issue a writ this Court

would normally be reluctant to interfere with the High Court's order unless it is satisfied that the discretion was not properly, reasonably or judiciously exercised, or unless there are other strong reasons to justify its interference.'

The basis thus laid down by their Lordships for interference where there has been exercise of discretion refusing to issue a writ under Article 226 applies equally to the consideration of an appeal under clause 10 from a judgment of a Single Judge refusing to issue such a writ in the exercise of his discretion. It is this basis which governs the matter and provides the answer to the question.

11. The learned Deputy Advocate-General has contended that this Court can only interfere in the exercise of its jurisdiction under Article 226 where there is an error of law apparent on the face of the record, and not where there is only an error of fact however apparent and however gross. This is largely true. The learned counsel has then pressed that the face of the record is the impugned order alone. This, on authority, is not so. In Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw, (1952) 1 K. B. 338, at p. 352, Denning L. J. observes--

'.. .. .. I think the record must contain at least the document which initiates the proceedings; the pleadings, if any; and the adjudication; but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them. If the tribunal does state it reasons and those reasons are wrong in law, certiorari lies to quash the decision.'

This was followed by Chakravartti, C. J. (Das Gupta J. agreeing) in S.K. Dutt v. Anglo-India Jute Mills Co., Ltd., (S) AIR 1957 Ca! 514. In Abanindra Kumar Maity v. A. K. Majumdar, (S) AIR 1956 Cal 273, the same learned Chief Justice said--

'It is true that the face of the order need not be limited to the actual paper on which the order is inscribed, but may also comprise one or two correlated documents, if it refers to them by its own terms.'

In Dholpur Co-operative Transport and Multi Purpose Union Ltd. v. Appellate Authority Rajasthan, AIR 1955 Raj 19, Wanchoo, C. J. delivering the judgment of the Division Bench defining the scope of the expression 'an error of law apparent on the record' observed--

'The meaning of this expression is well-settled, and the error of law envisaged should be so patent that a bare perusal of the judgment and the record on which it is based would show that there was error.'

So in the present appeal not only the reasons of the revenue officers forming basis, of their orders are to be considered but also the Khasra Girdawari, Exhibit D. 1, and the statement of the Patwari, which have been incorporated in the orders and which are the basis of the orders.

12. One ground taken by the appellants in their writ petition has been that the area of the four field numbers in question is not land within the meaning of section 2(8) of the Act, which defines the word 'land' as having the same definition as in the Punjab Tenancy Act, 1887 (Punjab Act 16 of 1887). The definition of this word in section 4(1) of that Act is--

'land' means land which is not occupied as the site of any building in a town or village

and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land.'

It has been shown that in the Khasra Girdawari, Exhibit D. 1, the area of the four field numbers is recorded as 'Gair Mumkin'.

In Narain Kaur v. State of Punjab, 1964 C.L.J. (Rev. Sup. pb) 62, my learned brother Khanna J. refers to this definition of 'Gair Mumkin land' in Land Revenue Assessment Rules of 1929--

'ghair mumkin land which has for any reason become unculturable, such as land under roads, buildings, streams, canals, tanks; or the like, or land which is barren sand, or ravines', and then holds that 'Gair Mumkin land which is not subservient to agriculture, in view of the above definition, would obviously not answer to the description of land as defined.' That was a case under the Pepsu Tenancy and Agricultural Lands Act, 1955, and, as the definition of 'land' is the same, so the dictum of the learned Judge applies in this case. It means that land which is recorded as 'Gair Mumkin land' in the revenue records, but is not occupied or let for agricultural purposes or purposes subservient to agriculture, or for pasture, is not land within the meaning of section 2(8) of the Act. If the entry in the revenue record in regard to land is that it is Gair Mumkin that is prima facie evidence of the nature of land, and it is then for anybody who says that that land no longer answers to such nature because it is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, to prove that fact to dislodge the entry in the revenue records. The party in whose favour such entry is can rest on that entry unless somebody else who wishes that party not to have advantage It of that entry proves the contrary to the fact as stated in the entry. It has already been shown that out of those four field numbers only two small areas have been cultivated by two tenants of the appellants. It is only those two small areas that would become land by such cultivation within the meaning of that word in section 2(8) of the Act and not the rest. The difficulty, however, with regard to this aspect of the argument on the side of the appellants is that it was not raised in this form either before the Commissioner or before the Financial Commissioner. No reference to this aspect of the matter was in substance made before the Assistant Collector and the Collector. It is true that it was pointed out to the Commissioner and the learned Financial Commissioner that the area of the four field numbers is 'Gair Mumkin Johri' or unculturable pond, but that was for this purpose that it was not in the self-cultivation of the appellants. The argument was not to invite the officers to come to the conclusion whether or not the area under those field numbers answered to the definition of the word 'land' as in Section 2(8) of the Act. This argument for the first time is thus not available to the appellants in a petition under Article 226.

13. Another ground taken by the appellants in their writ petition is that nobody took any exception to the reservation of land by them according to Section 5(1) of the Act, but to this the reply on behalf of respondents 1 to 5 is that the question of the surplus area with the appellants has yet to be decided. So that this ground does not help the appellants. The revenue officers have all agreed in coming to the conclusion that the reservation made by the appellants not being in accordance with section 5(1) (b), because of an omission to include in it self-cultivated land of the appellants of those four field numbers, is invalid as a whole. They are of the opinion that the provisions of Section 5(1) (b) are mandatory and non-compliance with the same renders the

reservation not according to law and hence of no consequence.

In Raghbir Singh v. Financial Commr. Revenue, Pun jab, (1964) 66 Pun. L.R. 659, my learned brother Pandit J. has held that as no penal consequence is provided in the Act for any such omission, the entire reservation because of such omission, does not become invalid and cannot be completely ignored. In Angrej Singh v. Financial Commr. Punjab (1962) 64 Pun. L.R. 736, at p. 741, Tek Chand J., with whom Dua J. concurred, was of the opinion that

'the landowner has a restricted choice in reserving for himself the parcels of his land as he has to adhere to the order laid down in the proviso to Sub-section (1) of Section 5. No reservation in contravention of the proviso shall be valid.'

There is, therefore, obvious conflict in these two decisions of this Court, but perhaps in Raghbir Singh's case (1964) 66 Pun LR 658) no party cited before the learned Judge the decision of the Division Bench in Angrej Singh's case (1962) 64 Pun LR 736. It is, however, not necessary to give a final opinion; on this aspect of the matter in this case because of the approach to the other two grounds of the appellants in their writ petition, which now remain to be considered.

14. The appellants have urged in their Writ Petition that they were never in self-cultivation of the four field numbers in question and that there is no evidence that the area of those field numbers was ever in their cultivation, let alone it being under their self-cultivation on the date of the commencement of the Act, that is to say, on April 15, 1963. It has already been shown that in the Khasra Girdawari, Exhibit D. 1, the four field numbers are not shown in self-cultivation of the appellants, but are rather vacant land as unculturable or small areas of two field numbers cultivated by two tenants. It has further been shown that, with reference to the same Khasra Girdawari and the statement of the Patwari there is no evidence of self-cultivation of those field numbers by the appellants at any time of the period covered by the Khasra Girdawari, Exhibit D. 1, and particularly on the commencement of the Act (April 15, 1953). No-doubt, the finding of the Revenue Officers, whether or not the appellants were in self-cultivation of those field numbers on the date of the commencement of the Act, is a finding of fact, and, as I have already said, normally this Court cannot interfere in a petition under Article 226 of the Constitution in case of an error of fact however gross and apparent it may be. Their Lordships, in Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477,, enumarate the circumstances in which a finding of fact is open to interference in such a petition. After referring to other circumstances on which there can be interference in a finding of fact, their Lordships observe that--

'If a finding of fact is based on no evidence, that would be regarded as an error of law which could be corrected by writ of certiorari.''

In this case, the conclusion that I have reached, as above, is that there is no evidence for the finding of fact by the Revenue authorities that the petitioners have been in self-cultivation of those four field numbers. In addition, I have also shown that although the Assistant

Collector and the Collector proceeded on irrelevant considerations to this finding, and such irrelevant considerations were brought to the notice of the Commissioner and the learned Financial Commissioner in revision, but neither respondent on that basis proceeded to reverse such finding of fact. On the material, on which the

Revenue officers have proceeded, I have further indicated, that a judicial mind trained and experienced in judicial approach would not have reached such a conclusion. It is apparent in this approach that the only course left to this Court, in the exercise of judicial discretion in the Writ petition of the appellants, is to do justice and to quash the order of respondent 2 with which also of course fall the orders of respondents 3 to 5. This is a case of manifest and gross injustice and a case eminently appropriate for interference by this Court in the exercise of its discretionary jurisdiction under Article 226. The reasons just given are strong reasons to justify such interference.

15. In consequence, I would accept this appeal, reverse the judgment of the learned Single Judge, and, accepting the petition of the appellants, quash the impugned order of respondent 2, with which, as I have said, the orders of respondents 3 to 5 also go, and direct under Article 227 of the Constitution that the Assistant Collector-respondent 5 will now proceed with the applications of the appellants for eviction of the tenants to a decision in accordance with law. I would make no order with regard to costs in this appeal.

HARBANS SINGH J.

16. I agree.

17. R.P. KHOSLA, J.

17. I am in full agreement with the judgment proposed by my learned brother Mehar Singh J. and have nothing to add.

18. P.C. PANDIT J.

18. I have carefully gone through the judgment prepared by my learned brother Mehar Singh J., but with very great respect to him, I have not been able to persuade myself to agree with his decision. It is for this reason that I am writing my separate judgment.

19. The appellants in this Letters Patent appeal are the landlords and respondents their tenants. The landlords filed applications before the Assistant Collector, First Grade, Fazilka, District Ferozepore, for the ejectment of their tenants under Section 9(1) (i) of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act) on the ground that the land in dispute had been reserved by them under Section 5 (1) of the Act.

20. The tenants resisted these applications and raised a preliminary objection that the reservation made by the landlords was illegal, because they had not included therein certain Khasra numbers, which were under their self cultivation. According to them, under section 5(1) of the Act, it was mandatory for the landlords to include the area under their self-cultivation at the commencement of the Act in making the said reservation.

21. This objection prevailed with the Assistant Collector, who dismissed these applications as all of them were based on the same allegations.

22. Against this decision, the landlords went in appeal to the Collector and there it

was urged by them that it was not necessary for them to reserve those khasra numbers, because they were shown as makbuza malikan and were ghair mumkin and not cultivable and, as such, they could not be in their self-cultivation as defined in Section 2(9) of the Act. Self-cultivation, according to the Act, meant cultivation by a landowner either personally or through his wife or children or through such of his relations as might be prescribed or under his supervision. It was also contended that those khasra numbers were actually in possession of the tenants during kharif 1953. The Collector, however, found that the entry in the khasra girdawari in respect of of these khasra numbers was 'khud kashat makbuza malikan' and that the land was under the possession of the landlords and not the tenants at the time of the commencement of the Act. On this finding, the appeals were rejected.

23. Thereafter, the landlords went in revision before the Commissioner, who also dismissed the same.

24. The landlords then filed revisions before the learned Financial Commissioner. He agreed with the finding of the Officers below that the reservation made by the landlords was not according to law, because the khasra numbers in dispute were shown as 'khudkasht' and under the possession of the landlords at the commencement of the Act and they should have been included in their reserved area. It was also found by him that as the reservation made by the landlords was irregular and not in accordance with law, the tenants could not be ejected from the area in dispute. The finding of the officers below, was, according to the learned Financial Commissioner, a finding of fact and could not be interfered with in revision. As a result, the revision petitions were dismissed on 24-4-1959.

25. The landlords then filed a writ petition in this Court on 23-1-1960 challenging the legality of the order of the learned Financial Commissioner. When it came up for hearing before Dua J., an objection was raised on behalf of the respondents that the writ petition had been unduly delayed and this Court should not exercise its jurisdiction, which was a discretionary one, in favour of that party, which had delayed in approaching this Court for nearly 9 months. In reply to this objection, an effort was made by the appellants to explain this delay. This explanation, however, failed to satisfy the learned Judge, who dismissed the writ petition on the ground of delay, observing that the appellants had been guilty of undue delay and laches and were, in his opinion, not entitled to claim discretionary relief by means of a high prerogative writ. It was further remarked by the learned Judge that it was indisputable that the petitioners under Article 226 of the Constitution must show due diligence and promptitude in approaching this Court.

26. Against this decision, the landlords filed a Letters Patent Appeal. The same came up for hearing before a Bench of this Court consisting of Dulat and Mahajan JJ. It was observed by the Bench that the grant of a writ under Article 226 of the Constitution being a discretionary relief, which could appropriately be refused on the ground of unexplained delay, the exercise of such a discretion by a learned Single Judge of this Court was hardly open to question in a Letters Patent Appeal. Learned counsel for the appellants, however, pointed out that a Full Bench of this Court in Gurmej Singh v. Election Tribunal, Gurdaspur, (1964) 66 Pun L.R. 589 :(AIR 1964 Punj 337), had held that delay alone in a case, where the petitioner's claim was on the merits perfectly good, could not be a ground for refusing him relief and that in view of that decision, he was entitled to show that his case was good on the merits and if he succeeded in doing so, the ground of delay would disappear and he would be entitled to proper

relief in spite of the finding of the learned Single Judge that there was delay in the case, which had not been satisfactorily explained. The Bench was of the opinion that there were certain observations in that Full Bench decision, which did lend some support to the suggestion made by the learned counsel for the appellants. They, however, were of the view that this suggestion if taken to its logical conclusion would be a great departure from the established practice that delay was by itself a good ground in law justifying this Court's refusal to exercise its jurisdiction under Article 226 of the Constitution. They went on to say that it was not easy to accept the suggestion that the Full Bench intended to make such a departure. They were of the opinion that it had been a little difficult for them to understand what precisely the implication of the decision of the Full Bench was and since it would be improper for them to depart from the rule laid down by the Full Bench, it was desirable that this case be decided by a larger Bench so that the basis and the implication of the Full Bench decision could be satisfactorily considered and settled. That is how this Letters Patent Appeal has come before us.

27. The main question for decision in this appeal is whether the learned Single Judge was right in throwing out the writ petition on the sole ground that the appellants had been guilty of laches and there was unexplained undue delay on their part in approaching this Court for relief under Article 226 of the Constitution or was it necessary for him to examine the merits of the case before dismissing their writ petition on the ground of unexplained delay. The chief argument of the learned counsel for the appellants was, as is also clear from the judgment of the referring Bench, that in a case where the petitioner's claim on the merits was perfectly good, then delay alone could not be a ground for refusing him relief. He, consequently, argued that he was entitled to show that his case was good on the merits and if he succeeded in doing so, then the ground of delay would disappear and he would be entitled to the proper relief under Article 226 of the Constitution. The point for decision is whether this submission of his is correct in law or not.

28. It is undisputed that the powers of the High Court under Article 226 of the Constitution are discretionary and in order to invoke the extraordinary jurisdiction of this Court by way of a high prerogative writ, it is necessary that the petitioner must show due diligence and promptitude in approaching this Court. A Division Bench of this Court in Messrs. Sikri Brothers v. State of Punjab, (1957) 59 Pun L.R. 259 : (AIR 1957 Punj 220), held thus--

'A petition under Article 226 must be brought without unreasonable delay, for it is subject to the equitable doctrine of laches. A Court exercising its extraordinary jurisdiction is extremely reluctant to examine the grievances of a person who has not shown any reasonable diligence in the assertion of his claim or who has slept upon his right for an unreasonable period of time or who has failed to show an excuse for his laches in asserting the said rights. It is of utmost importance, therefore, that a person who seeks the intervention of the High Court under Article 226 of the Constitution should give a satisfactory explanation of his failure to assert his claim at an earlier date. The excuse for his procrastination should find a place in the petition submitted by him and the facts relied upon by him should be set out clearly in the body of the petition.'

It is conceded by the learned counsel for the appellants that unexplained delay is an important consideration for refusing relief under Article 226, but his argument is that on this ground alone a writ petition cannot be thrown out. So far as this Court is

concerned, there are a number of decisions which go to show that laches of the petitioner was considered to be a valid ground in law in refusing him relief under Article 226 of the Constitution. In Kundan v. State of Punjab, 11955) 57 Pun L. R. 506 : (AIR 1956 Punj 92) a Division Bench of this Court observed--

'In a case where the extraordinary powers of this Court are sought to be moved, the question of delay is a very important matter. Where a person challenges the validity of an order on the ground that the Authority passing the order had exceeded its powers, the challenge must be made immediately or at any rate as soon as the aggrieved person has exhausted all other lawful remedies. If a person chooses to allow time to pass, this Court will not interfere. The importance of promptness in moving the High Court under Article 226 of the Constitution has been emphasised more than once.'

In another case in S. Akhtyar Singh v. Inspector General of Police, Punjab, (1955) 57 Pun L.R. 490 : (AIR 1956 Punj 10) a Bench of this Court held--

'Inordinate delay in moving the High Court disentitles a person to the remedy under Article 226 of the Constitution of India and the High Court will not grant any relief in the extraordinary discretion conferred by Article 226 of the Constitution, when an aggrieved party comes after such long delay.'

A similar view was taken by Gosain and Harbans Singh JJ. in T.L. Tandon v. State of Punjab, AIR 1960 Punj 646, by Dua J. in Ganga Ram Bhatia v. Union of India, AIR 1959 Punj 643, and Gurdit Singh Wadhera v. Regional Settlement Commr. Jullundur, AIR 1960 Punj 58, and by Grover J. in Dina Nath v. Union of India, (1962) 64 Pun LR 1014. These authorities do not lay down that in case the writ petition was being thrown out on the ground of undue delay alone, it was necessary for the learned Judge to examine, in the first instance, the merits of the case and without doing that, the writ petition could not be dismissed.

29. Now, let us examine the views of the other High Courts on this question,

30. So far as the Madras Court is concerned, it was held in a Bench decision of that Court in Kanniah Prasad v. Deputy Commercial Tax Officer, AIR 1964 Mad 311--

'No party has a right to approach the High Court and to demand the exercise of jurisdiction under Article 226 unless he has exhibited due diligence or if, there has been undue delay, he is able to account for it in a convincing manner. The exercise of writ jurisdiction is a discretionary power and a party does not approach the High Court as a matter of vested right irrespective of his own conduct. A party seeking exercise of jurisdiction under Article 226 in his favour must exhibit due diligence and must not delay in any unconscionable manner and must not be guilty of laches. If he is so guilty, the High Court may decline to exercise the jurisdiction in his favour, though it may be that, from a strictly legal point of view, a good case existed for the exercise of jurisdiction, had the party been diligent. The situation is not affected by the question whether the party did or did not exhaust the other remedies open to him.'

To similar effect are the observations of Rajamannar C. J. in a Division Bench decision of that very Court in A. Nathamooni Chetti v. M.R. Biswanatha Sastry AIR 1951 Mad 250, where the learned Judges said that though there was no specific period of

limitation, it had generally been the practice of that Court not to exercise the extraordinary power by way of issue of prerogative writs when the petitioner was guilty of laches.

31. As regards the Calcutta High Court, it was held in a Bench decision of that Court in Satya Narayan Nathan v. State of West Bengal, (S) AIR 1957 Cal 310, that a writ of mandamus was not a writ of right. A person invoking the special jurisdiction of the Court for the extraordinary remedy by way of a writ was required to be diligent. The High Court would not be inclined to come to the assistance of a petitioner by a writ, if he came to the Court after six months of the order complained against. Also see in this connection another decision of the same Court in Sm. Sushila Devi Rampuria v. Income-tax Officer, AIR 1959 Cal 687, where it was observed that an equity Court was not bound to intervene if there had been delay or acquiescence, but would leave the parties to their ordinary legal remedies, if any.

32. The Allahabad High Court also holds similar views on this question. In Mongey v. Board of Revenue, U.P, AIR 1957 All 4? (Division Bench) it was held that a writ petition under Article 226 of the Constitution should be filed as quickly, after the delivery of judgment of the inferior Tribunal, as possible. A period of 90 days, which was the period fixed for appeals to the High Court from the judgments of Courts below, should be taken as the period for application for the issue of a writ of certiorari and that time can be extended only when circumstances of a special nature, which are sufficient in the opinion of the Court, are shown to exist. In this case, the learned Judges dismissed the writ petition on the ground of unexplained delay.

33. In Andhra Pradesh High Court, the view also is the same. Suba Rao C. J. in a Bench decision of that Court in Eluru Venkata Suba Rao v. Dist. Transportation Supdt. (Traffic) Vijayawada Southern Rly. AIR 1958 Andh Pra 206, observed that it was well settled rule of practice that an application by way of writ of certiorari or other writ should! be filed within a reasonable time from the date of the order which the applicant seeks to be quashed. Applications under Article 226 of the Constitution would be entertained only if they were filed within a reasonable time from the date of the making of the order. Ordinarily, a period of six months might be considered reasonable, but in extraordinary circumstances the High Court might excuse the delay. The writ petition was in that case dismissed on the ground of unexplained delay.

34. The Tranvancore-Cochin High Court also takes a similar view. A Bench of that Court in T.K. Vasudevan Pillai v. State, AIR 1956 Trav Co. 33, held that a writ under Article 226 would generally be refused in all cases where the petitioner failed to show that he had proceeded expeditiously. The only delay which the High Court would excuse in presenting a petition under Article 226 was the delay which was caused by the petitioner pursuing a legal remedy which was given to him. The writ petition in that case also was dismissed on the ground of unexplained delay.

35. Thus, it will be seen that the other High Courts have also taken the view that a writ petition can be dismissed on the sole ground of laches and they do not lay down that it is the right of the litigant to ask the Court , to go into the merits of the case and show that if he had a good case, then the question of delay would be immaterial. The reason for the same seems to be obvious. Before a litigant can invoke the jurisdiction under Article 226 of the Constitution, this Court is entitled to ask him, before adverting to the merits of the case, as to the cause of the delay in approaching

this Court. If he is unable to satisfy on that ground and cannot give a reasonable explanation for the inordinate delay, then this Court would be perfectly justified in refusing to look to the merits of his case and dismiss his writ petition on the ground of laches alone. If he was not diligent enough to look after his rights and was sleeping over them for a considerable period, he cannot ask this Court to give him the relief under the extraordinary powers of this Court by showing that his case on the merits was good. I may make it clear that I am not laying down that this Court cannot go into the merits of the controversy, even if there is delay in approaching this Court. That would be purely within the discretion of the learned Judge hearing the writ petition. If in a particular case, he thinks that mere delay should not stand in his way in deciding the writ petition on the merits, he would be within his rights in doing so, but a litigant cannot force him to go into the merits of the case first and condone the delay on the ground that he had been able to make out a good case on the merits. Similarly, the respondent has no right to ask the Court not to interfere, because there is unexplained delay on the part of the petitioner in approaching this Court. It is true that the discretion has to be exercised by the learned Single Judge in a judicial manner and not arbitrarily. But once the learned Single Judge refuses to exercise his discretion in favour of the petitioner on the ground that he is guilty of laches, then the only question before the Letters Patent Bench would be whether this finding of the learned Single Judge was right or wrong in view of the explanation given by the petitioner for the inordinate delay. The Bench hearing the appeal can only interfere with this finding, if they come to the conclusion that the learned Single Judge acted arbitrarily and did not exercise his discretion judicially in arriving at that finding.

36. Let us now examine the authorities which were referred to by the learned counsel for the appellants. He mainly relied on a Full Bench decision of the Nagpur High Court in Krishna Rajeshwar v. Chief Secy, of the M.P Govt. Police Dept., AIR 1954 Nag 151. in which it was held----

'The relief under Article 226 is discretionary and, invoking as it does the extraordinary powers of the High Court, must be sought as soon as an injury is caused of threatened.

* * *

* * *

The Court, under Article 226, however, owes duty not only to the contending party but also to the petitioner, and wide and untrammelled as are its powers, it cannot be precluded from rectifying a grave injustice simply because the petitioner could have moved in the matter earlier. It would, therefore, be wholly repugnant to the nature of the proceedings and of the powers of the Court that are invoked, in the absence of a rule framed under clause 27 of the Letters Patent, to postulate an artificial, much less an arbitrary, standard to determine whether a petition should be thrown out in limine or considered on merits. The object, in such cases, is the removal of grave and patent errors which infringe on human rights and unless, by undue delay or laches, inconsistent, legal or equitable considerations have arisen which judicial conscience cannot with equanimity ignore, justice should not be denied simply because the Court has not been moved soon after the injury was caused or threatened and the delay has not been explained. Naturally, therefore, the question of delay or laches cannot be determined with reference to the number of days that have elapsed since the injury was caused or threatened, and while in certain cases long delay may not be deemed

sufficient to defeat a just cause, in others, it may not in equity be fair to condone even a slight delay.'

These observations were, however, made by one of the learned Judges constituting the Full Bench.

It is also pertinent to mention that the following three questions had been referred to the Full Bench for decision :--

'1. Whether the High Court can lay down a rule of diligence by reference to a number of days by a decision without framing it under its rule-making powers ;

2. Whether a petition under Article 226 for a writ of 'certiorari' is liable to be rejected 'in limine' on the ground that it is filed beyond 45 days, unless the petitioner satisfactorily explains each day's delay thereafter; and

3. Must the High Court infer diligence when a petition for a writ of 'certiorari' is filed within 45 days irrespective of the fact that an inexcusable delay might be involved even within those 45 days.'

This reference became necessary, because in an earlier decision of the Constitution Bench of that Court in Rajnandgaon Bus Service Co v. Appellate Authority AIR 1953 Nag 80, the following rule was laid down :--

'Though no period of limitation has been prescribed for an application under Article 226 of the Constitution, yet ordinarily it must be made as soon as any threat to any right is there. Even an application in the ordinary revisional jurisdiction of this Court has got to be made within 45 days of the order moved against. We would, therefore, in the ordinary circumstances adhere to that rule, viz., that if an application has not been made within 45 days of the order impugned, it shall be deemed not to have been made with due diligence, and any applicant moving this Court beyond that time will have the burden on him of showing that in spite of due diligence the Court could not have been moved earlier.'

The Referring Bench did not seem to approve of this rule and, therefore, they referred the matter to a Full Bench. All these three questions were answered in the negative by the three learned Judges constituting that Bench. The leading judgment was given by Bhutt J., who, during the course of the same, made the observations referred to above. The second learned Judge Deo J., agreed that all the three questions should be answered in the negative and he added his own reasons for doing so. The third learned Judge, Sen J., merely said that he agreed that the three questions be answered in the negative. It will thus be seen that the observations relied upon by the learned counsel for the appellants represented the view of one learned Judge of that Court. It is also noteworthy that these observations were made in the context of the rule laid down by the Constitution Bench which prescribed a period of 45 days within which an application under Article 226 of the Constitution should be filed in that Court. Furthermore, it has not been laid down in that authority in absolute terms that a writ petition can never be dismissed on the ground of laches and the petitioner is entitled as a matter of right to get his case examined on merits before doing so.

37. A reference was then made by the learned counsel for the appellants to a Bench

decision of the Calcutta High Court in Union of India v. Elbridge Watson, AIR 1952 Cal 601, but in that authority the question of delay had not been considered.

38. Learned counsel then cited a Full Bench decision of the Gujrat High Court in Madhaji Lakhiram v. Mashrubhai Mahadevbhai Rabari, AIR 1962 Guj 235, where the learned Judges did not dismiss the writ petition on the ground of laches, observing that having regard to the peculiar circumstances of that case, they did not think it proper to throw off that writ petition on the ground of delay. These observations, however, do not go counter to the view that I have expressed above, namely, that if the learned Judge wishes to entertain a writ petition in spite of the delay on the part of the petitioner in filing the same, he is not debarred from doing so, but this is entirely a discretionary matter with him.

39. Learned counsel then referred to a decision of the Judicial Commissioner of Tripura, in Mahandralal Chakraborti v. The Union Territory of Tripura, AIR 1959 Tripura 21, where it was held that the object behind Article 226 being the rectification of grave injustice, mere delay could not be a ground for refusing a just writ. In this case, however, a finding was given that the delay in filing the writ petition had been duly explained by the petitioner. The other observations, therefore, become obiter. Moreover, reliance was placed by the learned Judicial Commissioner on the Full Bench decision of the Nagpur High Court mentioned above. That ruling has already been commented upon by me.

40. Another submission was made by the learned counsel for the appellants, namely, that once a writ petition had been admitted to a pucca hearing and records had been sent for, then the same could not be dismissed on the ground of unexplained delay alone. Reliance for this was placed on a Bench decision of the Assam High Court in Damodar Goswami v. Narnarayan Goswami, AIR 1955 Assam 163, where it was held--

'The question of delay is a very potent factor to be taken into account in throwing out an application for a writ of certiorari in limine; but after the issue of a rule nisi, when the Court has examined the records and is satisfied that the order complained of is manifestly erroneous and illegal or without jurisdiction, the High Court would be loath to allow the mischief of the order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection.'

In this very authority, Sarjoo Prasad C. J., with whom the other Judge agreed, observed --'There has been no doubt some delay in filing this application; and it must be observed that the writ will be generally refused in cases where the petitioner fails to show that he has proceeded expeditiously after the discovery that it was necessary to resort to it. This is especially so where public inconvenience was likely to result from its use. But one has to see in this case if the delay has been so unreasonable as to warrant a refusal of the petition. I am unable to hold in the circumstances that the delay is fatal to the grant of a writ. There is much substance in the explanation offered by the petitioner.'

If there was proper explanation for the delay, naturally, the learned Judges had to go to the merits of the controversy. With great respect to the learned Judge, I have not been able to find any difference in principle as to why a writ petition can be dismissed in limine on the ground of laches, but the same cannot be thrown out on the same ground after the case has been admitted to a pucca hearing. If unexplained delay can

be a good cause for refusing relief to the petitioner at the preliminary stage, I see no reason why he should get any advantage on this ground after the issuing of notice to the other side. Sometimes the question of delay may not be noticed by the learned Judge at the motion stage. If later on the respondent, to whom notice has been issued, comes and points out to the Court that the petitioner has been guilty of laches, it is not easily understood as to why that ground should not prevail at that stage. I may also mention that this authority was considered by a Bench decision of the Madhya Pradesh High Court in Roopsingh Devisingh v. Sanchalak Panchayat, AIR 1962 Madh Pra 50, and these observations were not approved and it was held that simply because a writ application had been ' admitted for hearing, it could not be said that the ground of unexplained delay could not be canvassed during the final hearing.

41. The next contention raised by the learned counsel for the appellants was that if the writ petition involved breach of fundamental rights, then the question of delay in filing the same was wholly immaterial and no petition could be thrown out solely on that ground. Reliance for this submission was made on a Supreme Court ruling in Basheshar Nath v. Commr. of Income-tax, Delhi, AIR 1959 SC 149 Bench decision of this Court in Bhagwat Dayal v. Union of India AIR 1959 Punj 544, Single Bench authorities of this ourt in Mussaddi v. State of Punjab, (1961) 63 Pun LR 474, Bhagwant Singh v. Union of India, AIR 1962 Punj 503, Lal Chand v. Dist. Food and Supplies Controller, Amritsar, 1964 Cur LJ 517 : (AIR 1965 Punj 410 and Ram Sukh v. State of Punjab, 1965 Cur LJ 611.

42. So far as this contention is concerned, firstly, the question of fundamental rights was not raised before the learned Single Judge. It is quite clear from his. judgment that the appellants never mentioned that their writ petition involved any breach of fundamental rights. It is undisputed that the Letters Patent Bench will not allow the appellant to raise any question of fact or law, which was not agitated before the learned Single Judge, whose judgment was under appeal. Secondly, it is again a doubtful matter as to whether there was, in fact, a question of any breach of fundamental rights involved in the present writ petition. The landlords had filed an application for the ejectment of the tenants from a certain area of land. That application had been dismissed by the learned Financial Commissioner by means of the impugned order. Does such a matter involve the question of violation of any fundamental rights Learned counsel for the respondents strenuously urged that there was no breach of any fundamental rights and this was a dispute between two private individuals, one seeking ejectment of the other from his land. Thirdly, even assuming for the sake of argument that the question of fundamental rights was indirectly involved in the present writ petition, the point for decision arises as to whether such a writ petition can be dismissed on the ground of laches or not. Before I discuss the rulings of this Court I am of the opinion that this matter had been settled by the Supreme Court long ago. They have made no distinction between the writs involving fundamental rights and those in which other rights are in dispute. So far as the Supreme Court decision relied upon by the learned counsel for the appellants, namely, AIR 1959 SC 149, is concerned, suffice it to say that this point was not dealt with there. All that it lays down is that a person cannot give up or waive a breach of the fundamental rights conferred on him by Part III of the Constitution. The direct authority of the Supreme Court on this point is Darayo v. State of U. P. AIR 1961 SC 1457, where the question for decision was that if a writ petition under Article 226 of the Constitution involving fundamental rights had been dismissed by a High Court, the petitioner could again move the Supreme Court under Article 32 of the Constitution on the same facts or would the dismissal by the High Court act as a bar

to his seeking relief in the Supreme Court on the same cause of action. While dealing with this matter, Gajendragadkar J. observed as under :--

'It is, however, necessary to add that in exercising its jurisdiction under Article 226 the High Court may sometimes refuse to issue an appropriate writ or order on the ground that the party applying for the writ is guilty of laches and in that sense the issue of a high prerogative writ may reasonably be treated as a matter of discretion. On the other hand, the right granted to a citizen to move this Court by appropriate proceedings under Article 32(1) being itself a fundamental right, this Court ordinarily may have to issue an appropriate writ or order, provided it is shown that the petitioner has a fundamental right which has been illegally or unconstitutionally contravened. It is not unlikely that if a petition is filed even under Article 32 after a long lapse of time considerations may arise whether rights in favour of third parties which may have arisen in the meanwhile could be allowed to be affected, and in such a case the effect of laches on the part of the petitioner or of his acquiescence may have to be considered; but, ordinarily if a petitioner makes out a case for the issue of an appropriate writ or order he would be entitled to have such a writ or order under Article 32 and that may be said to constitute a difference in the right conferred on a citizen to move the High Court under Article 226 as distinct from the right conferred on him to move this Court. This difference must inevitably mean that if the High Court has refused to exercise its discretion on the ground of laches or on the ground that the party has an efficacious alternative remedy available to him, then of course the decision of the High Court cannot generally be pleaded in support of the bar of res judicala. If, however, the matter has been considered on the merits and the High Court has dismissed the petition for a writ on the ground that no fundamental right is proved or its breach is either not established or is shown Jo be constitutionally justified, there is no reason why the said decision should not be treated as a bar against the competence of a subsequent petition filed by the same party on the same facts and for the same reliefs under Article 32. '

A plain reading of the abovementioned passage would make it quite clear that the learned Judge was clearly of the opinion that a writ petition under Article 226 of the Constitution involving fundamental rights could be dismissed by the High Court if the petitioner was guilty of laches, but this decision would not stand in the way of the petitioner, if he approached the Supreme Court under Article 32 of the Constitution for getting relief on the same facts, if, on the other hand, that petition was dismissed by the High Court on merits, then the petitioner would not be entitled to seek any relief in the Supreme Court on the same cause of action.

43. Then we have another recent case of the Supreme Court in Civil Appeal No. 140 of 1964 dated 22nd September 1964 (SC). This decision, in my opinion, decides both the questions (1) that a writ under Article 226, involving fundamental rights, can also be dismissed on the ground of laches and (2) that a writ petition under Article 226 of the Constitution can be dismissed by the High Court on the ground of laches alone and it is not necessary to go to the merits of the case before doing so. The facts in this case were that land measuring 36 acres, including 5 acres belonging to the appellant, had been acquired by the State of Bihar under a notification. This land was being taken over with a view to develop the same and make it suitable for residential purposes. The idea was to build houses thereon and sell the same to different persons to provide housing accommodation to the needy citizens of the State. The object of this scheme was to meet the problem of housing shortage in the State. This notification was challenged by the appellant by means of a writ petition filed in the

High Court. The case of the respondents was that the impugned notification was valid and that, in any case, by reason of the fact that the appellant had chosen to move the High Court after long delay, she was not entitled to any relief under Article 226 of the Constitution. The latter plea was upheld by the High Court and the appellant then went in appeal before the Supreme Court. It may be mentioned that while dismissing the writ petition on the ground of delay, the High Court in its judgment indicated that there was considerable force in the arguments urged by the appellant. After having expressed its opinion in favour of the appellant, the learned Judges observed that it would be unnecessary to finally determine the merits of the appellant's contentions, because she was bound to fail on the ground that she had made considerable delay in moving the High Court under Article 226 of the Constitution. While dealing with this appeal in the Supreme Court, Gajendragadkar C.J., who wrote the judgment, observed --

'It is well settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.'

Then the learned Chief Justice made a reference to three or four considerations, which, I may emphasise, had nothing to do with the merits of the case as such and which, in the view of the learned Chief Justice, supported the decision of the High Court that it was not a case where a writ should be issued in favour of the appellant, even though she might be right in her contention that the action taken by the respondent was not valid in law. Towards the close of the judgment, the learned Chief Justice again observed :

'In this connection, there is another point which we ought to mention. As we have already indicated, while exercising its jurisdiction under Article 226, it is for the High Court to consider whether as a result of the laches on the part of the petition 'or' (underlining (here into ' ') is mine) as a result of other relevant circumstances, it should not allow its writ jurisdiction to be invoked, and if in the exercise of its discretion the High Court refused to issue a writ, this Court would normally be reluctant to interfere with the High Court's order, unless it is satisfied that the discretion was not properly, reasonably or judiciously exercised, or unless there are other strong reasons to justify its interference. In the present case, we do not think it would be possible to hold that the High Court has not exercised its discretion reasonably or judiciously.'

Having observed thus, the learned Chief Justice dismissed the appeal. As I read this judgment. I am of the view that both the contentions raised by the learned counsel for the appellants in this case have been negatived by the learned Chief Justice. There is no manner of doubt that the writ petition in the Supreme Court case involved the question of fundamental rights. The High Court had dismissed the petition under Article 226 solely on the ground of laches on the part of the petitioner, even after having observed that there was considerable force in the contentions raised by the petitioner whose case on the merits was good. The dismissal of the appeal by the Supreme Court against this decision clearly indicates that there is no merit in the contention that if some body's case is good on merits, then the written petition under Article 226 cannot be dismissed on the question of unexplained delay alone, because had that been so, then the necessary result was that the appeal would have been accepted by the Supreme Court.

I can appreciate an argument that laches on the part of the petitioner is not a valid reason for dismissing a writ petition, but if it is a good ground in law, then I do not see any reason why a writ cannot be rejected on that ground alone. If in every case the litigant was entitled to go to the merits of the controversy and show that he had a good case, then, in my opinion, the ground of laches would become immaterial and meaningless. Nobody, in my opinion, has a right to approach this Court after any length of time and then say that since he has a good case on the merits, therefore, he is entitled to a relief under Article 226 of the Constitution, irrespective of the unexplained heavy delay on his part The Supreme Court decision further lays down that a writ petition, involving fundamental rights, can also be dismissed ,on the ground of laches and it necessarily follows therefrom that there is no warrant for the proposition that in a writ petition under Article 226. where fundamental rights are involved, the question of delay is wholly immaterial The learned Chief Justice has made it quite clear towards the end of his judgment that the High Court can in its discretion dismiss a writ petition on the ground of laches alone Learned counsel for the appellants submitted that the learned Chief Justice had taken into consideration some other circumstances also while dismissing the appeal, but. as I have already mentioned above. these considerations had nothing to do with the merits of the case and had been mentioned for the purpose of showing that the discretion exercised by the High Court was not in any way arbitrary or unreasonable or injudicious No decision either of the Supreme Court or any other High Court has been cited by the learn ed counsel for the appellants to show that when a writ petition was dismissed by the High Court on the ground of unexplained delay, it was observed that the same could not have been rejected on that ground alone, without examining the merits of the case

44. There is another decision of the Supreme Court in Civil Appeals Nos. 255 and 256 of 1962 D/-8-9-1964 (SC) wherein Gajendragadkar C. J. observed as under--

'The High Court has taken the view that though the writ petition was filed after some delay, that alone would not justify the High Court's refusing to interfere with the order, because if the said order was invalid and was not set aside under the writ jurisdiction, the respondent would have no other remedy Whether that is right or not and whether in similar circumstances, we would have interfered with the impugned order or not, do not really decide the question as to whether we should interfere with the decision of the High Court on the ground that the delay should not have been condoned. It is true that in exercising its writ jurisdiction under Articles 226 and 227. The High Court should be slow to condone delay made by the parties in moving it

under its prerogative jurisdiction But if on considering the relevant facts, the High Court comes to the conclusion that in a given case, the delay made by a party is not fatal to its securing relief in the High Court, we would clearly be reluctant to interfere with its derision.'

This decision also goes to show that if the High Court wants to ignore the question of delay and decide the case on the merits, it can do so and it is not bound in law to throw out a writ petition on that ground alone. The discretion in this matter is of the High Court, though it is right that the same has to be exercised judiciously and not in an arbitrary manner It is noteworthy that generally the discretion exercised by the High Court is not interfered with in appeal

45. In view of the Supreme Court decisions in AIR 1961 SC 1457 and Civil Appeal No. 140 of 1964 (SC), it cannot be said that a writ petition under Article 226 of the Constitution and involving fundamental rights cannot be dismissed on the ground of laches alone Let us, however examine the decisions of our own Court, referred to by the learned counsel for the appellants

46. So far as the Bench decision in AIR 1959 Punj 544 is concerned, it is true that it was observed there that if a party could not waive his fundamental right by an agreement. I hen obviously mere laches in applying under Article 226 would not deprive him of this right But at the same time a finding was given in that case that there had been no inordinate delay in challenging the impugned order In view of this finding the other observations would in my opinion be mere obiter

47. As regards the other Single Bench rulings, referred to by the learned counsel for the appellants, suffice it to say that though they have laid down that it is well settled that the enforcement of fundamental rights by way of writ proceedings is not to be fettered by reasons of delay but no authority has been cited in support of this proposition 1 may however, mention that in one of the cases. namely, AIR 1962 Punjab 503, while holding that a petition under Article 226 and involving fundamental rights could not be dismissed on the ground of delay, reliance was placed on the Supreme Court decision in AIR 1959 SC 149, but, as I have already mentioned above, this Supreme Court authority does not decide this question. On the other hand, in a Bench decision of this Court in 1955 PLR 506 : (AIR 1956 Punj 92) the writ petition involved fundamental rights and yet it was held that if a person chose to allow time to pass, (he High Court would not interfere in exercise of its extraordinary powers under Article 226 of the Constitution.

48. There is another Full Bench decision of this Court in S.G. Jaisinghani v. Union of India, Civil Writ No. 189-D of 1962 D/-11-3-1964: (AIR 1964 Punj 155 (FB)) wherein fundamental rights were involved in the writ petition and still it was held that delay in moving this Court under Article 226 of the Constitution was fatal

49. It was then argued by the learned counsel for the appellants that since no limitation was prescribed by the Constitution or by any rules framed by this Court for filing a writ petition under article 226, the learned Single Judge was in error in dismissing the present writ on the ground of unexplained delay of nine months

50. It is true that no limitation has been prescribed for moving this Court under article 226, but it has been laid down by all the High Courts that this being a discretionary relief, the petitioner must act with due diligence in approaching the

High Court for the grant of a high prerogative writ. This principle has been accepted by all the Courts. If somebody wishes to invoke the extraordinary powers of this Court, he must for that purpose move this court as soon as the injury is caused or threatened. It is on the basis of this very salutary principle that it has been laid down that if somebody is guilty of laches, then he would not be granted this discretionary relief. So far as the outside limit of approaching this court under article 226 is concerned, the same has been laid down in a Supreme Court decision in AIR 1964 SC 1006, where it was observed

'It appears to us, however, that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under article 226 can be measured The Court may consider the delay unreasonable, even if it Is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for THE: Court to hold that it is unreasonable.'

51. On this point. Subba Rao C. J. in a Bench decision of the Andhra High Court in Eluru Venkata Subba Rao's case, AIR 1958 Andh Pra 206 considered a period of six months to be reasonable in moving the High Court under Article 226 of the Constitution. He, however, was of the opinion that in extraordinary circumstances, the High Court could in its discretion excuse the delay. The learned Judge was making these observations on the basis of the rule prevailing in England, which had fixed a period of six months for filing a writ of certiorari. Since no rule has been framed by this Court on this point, it has to be left to the discretion of the learned Single Judge to hold whether in the circumstances of a particular case, the petitioner was guilty of laches or not. No hard and fast rule can be laid down for the guidance of the learned Single Judge in this respect. Each case will depend on its own facts The outside limit, as I have already mentioned above, has been fixed by the Supreme Court decision referred to above.

52. It was then argued by the learned counsel that there were a number of circumstances, as for example, the stakes involved in the case, importance of the question of law arising therein, whether there was inherent lack of jurisdiction in the authority which passed the impugned order, whether any prejudice had been caused to the other side on account of laches of the petitioner etc etc., which must be borne in mind by the learned Judge, while dismissing the writ petition and he could not throw out the same on the ground of delay alone.

53. No authority was cited in support of this proposition and in which were mentioned the number of circumstances which must be taken into consideration before a writ petition could be dismissed. As I have said, it is not possible to lay down the considerations which the learned Judge must bear in mind before he can throw out a writ petition As already mentioned above, no precise rule can be prescribed in this behalf There is also no authority for the contention that a writ petition cannot be dismissed on the ground of unexplained delay alone and that the learned Judge is bound to consider the merits of the case and if it was good on merits. then delay was immaterial

54. Learned counsel then argued that, according to the Full Bench decision of this Court in Gurmej Singh's case (1964) 66 Pun LR 589 : (AIR 1964 Punj 337 FB) the appellant was entitled to show that his case was good on merits and if he succeeded

in doing so, then the writ petition could not lie dismissed on the ground of delay alone

55. As I have mentioned in the very beginning of my judgment, it was on account of this submission of the learned counsel that Dulat and Mahajan JJ. referred this case to a larger Bench. Otherwise, as is clear from the referring order, they would have dismissed the appeal on the ground that the learned Single Judge had appropriately refused the discretionary relief on the ground of unexplained delay and the exercise of such a discretion by the learned Single Judge was hardly open to question in a Letters Patent appeal. The question therefore, is whether this Full Bench anywhere lays down that the petitioner in a writ petition is entitled to show that his case is good on the merits and if he is successful in that effort, then the ground of delay will disappear and he will be entitled to a proper relief under Article 226 of the Constitution. Does this decision lay down in unequivocal terms that no writ petition can ever be dismissed on the ground of laches alone 1 have gone through the majority judgment prepared by Dua J. in this case and I am unable to subscribe to the view that the learned Judge has at any place laid down as a broad proposition of law that no writ petition can ever be thrown out on the ground of unexplained delay. Nor was I able to discover that the learned Judge has staled anywhere that a litigant was as a matter of right entitled to refer to the merits of the controversy and show to the Court that he had an excellent case on the merits and the moment he does that, then the learned Judge was debarred from refusing him the relief on the ground of unexplained delay alone. Learned counsel for the appellants was not able to point out to any part of the judgment where these propositions had been laid down by Dua J. The referring Bench also seemed to be of the view that this Full Bench decision could not have intended to make a great departure from the established practice that delay was by itself a good ground in law justifying this Court's refusal to exercise its jurisdiction under article 226 of the Constitution. But since the learned counsel for the appellants was relying on certain observations in that case, they decided to refer the appeal to a larger Bench so that the basis and the implication of the Full Bench decision could be satisfactorily settled. As I have already mentioned above, in my opinion, this Full Bench decision does not anywhere lay down the two propositions of law on which the learned counsel for the appellants is basing his entire argument. I may mention that in this decision, Khanna J., who wrote the dissenting judgment, was clearly of the view that delay was a good ground for refusing relief to an aggrieved party, if the delay was unexplained.

56. Now, coming to the merits of the appeal, the question is whether the learned Single Judge has acted arbitrarily or injudiciously in exercising his discretion in throwing out the writ petition on the ground of unexplained delay. The impugned order was passed by the learned Financial Commissioner on 24th April 1959 and an application for obtaining the certified copy of this order was made by the appellants on 24th December 1959, that is. after a period of 8 months. The said copy was ready and delivered to the appellants on 14th January 1960 and the writ petition was then filed in this Court on 23rd January 1960. It has been ruled by a Bench of this Court in (1957) 59 Pun LR 259 : (AIR 1957 Punj 220), that the excuse for the delay should find a place in the writ petition itself and the facts relied upon by the petitioner should be set out clearly in the body of the petition. It is noteworthy that in the writ petition, the appellants have not mentioned that there was any delay on their part in filing the same and, consequently, the question of explaining the delay did not arise. However, the learned counsel for the appellants has relied on paragraph 20 of the writ petition and submitted that this contained the explanation for the delay. It runs thus --

'Petitioners, however, after a good deal of persuasion were successful in persuading four of the tenants-respondents Nos. 13, 24, 30 and 38 to relinquish their rights in the reserved area. They agreed to do so, vacated the land and filed affidavits to that effect. Other tenants-respondents were also likely to be induced to leave thirty standard acres of reserved area. Applications were made to the Assistant Collector First Class, Fazilka, to record their statements, to give effect to the same and now recognise the area as duly reserved. Even this application was rejected. Not only the said tenants want to resile from their statements on seeing this attitude of the revenue officers, but it has also become impossible to persuade other tenants to relinquish the land. '

A reading of this paragraph will, however, show that the appellants do not anywhere admit that there was any delay on their part in approaching this court and they do not offer, what is staled in this paragraph, as an explanation for the delay. When in the written statement dated. 25th of July 1960, an objection was raised by the respondents that the appellants had filed the writ petition after a period of 9 months and it was liable to be dismissed on the ground of inordinate delay and laches, they filed their replication on 23rd of October 1960. that is, after about three months of the filing of the written statement. It is pertinent to mention that this replication was put in without obtaining the leave of the court and under the Rules and Orders of this Court, a petitioner is not entitled to file a replication without the permission of the Court and on that ground it cannot even be looked at. The learned Single Judge, however, examined the contents of the replication also on this point and came to the conclusion that the explanation offered by the appellants was no justification for the delay of about 9 months on their part in coming to this Court. The learned Judge went on to say that no details had been furnished to this Court showing as to when and what precise efforts were made by the appellants to persuade some of the tenants to relinquish their rights in the reserved area. If that had been done, it would have enabled the Court to determine the question of diligence on their part. The learned Single Judge then observed that 'all that has been stated in the replication (which has been placed on the record without the permission of this Court) is that by 16th November. 1959 as a result of talks for a compromise, four tenants agreed to relinquish the areas in their possession in favour of the landlord-petitioners, as their reserve area, but the S. D. O., summarily rejected this prayer. At this, the tenants had started threatening the landlords with steps for compulsory purchase. In my opinion, if the order of the S. D. O. refusing to uphold the alleged relinquishment by some tenants is contrary to law or without jurisdiction or is otherwise assailable, then the petitioners should have impugned the validity of that order according to law But that order has not been specifically sought to be quashed in the present proceedings and indeed, according to the petitioners only four tenants had agreed to relinquish their possession The petitioners have thus been guilty of undue delay and laches and are in my opinion not entitled to claim discretionary relief by means of a high prerogative writ It is indisputable that, petitioners under article 220 of the Constitution must show due diligence and promptitude in approaching this Court The explanation offered by the appellants is quite vague and it is not possible for me to say that in rejecting the same. the learned Single Judge had in any way, exercised his discretion arbitrarily or in an injudicious manner

57. In view of what I have said above. I would dismiss this appeal, but leave the parties to bear their own costs in this appeal as well

Khanna, J.

58. I agree with the order proposed by my learned brother Mehar Singh. J. In view, however, of the importance of the question. I would like to add n few lines

59. Article 226 does not prescribe am period of limitation within which a petitioner should approach the Court to invoke the remedy prescribed therein The outside limit within which such n petition must be filed is as held in AIR 1964 SC 1006. the period prescribed by the Limitation Act for the suit seeking the same relief Although the period of limitation for the suit is the outside limit a petitioner applying under article 226 is expected to move the Court with expedition and diligence. Delay in filing the petition under article 220 is a factor which would weigh with the Court whether it should in the exercise of its discretion allow or reject the petition Unexplained delay by itself can be a good ground for dismissal of such a petition, though in cases involving infringement of fundamental rights the Court may ask for some additional circumstance like an equity arising in favour of the respondent from the petitioner's inaction to justify the dismissal of the petition A petitioner filing a petition after delay cannot claim as of right that the Court must go into detail ed merits of the case before it dismisses such a petition Where, however there is a mistake apparent on the face of the record and it has led to gross or manifest injustice the Court would be liberal to condone and overlook the delay It would not however be proper to lay down any hard and fast rule and it would ultimately depend upon the circumstances of each case whether the delay justifies the dismissal of the petition

60. BY THE COURT :-- In view of the majority opinions, this appeal is allowed, reversing the judgment of the learned Single Judge, and the petition of the appellants is accepted, with the result that the impugned order of respondent 2. with which the orders of respondents 3 to 5 also go, is quashed, and the direction under Articles 226 and 227 of the Constitution is that the Assistant Collector, respondent 5, will now proceed, in the applications of the appellants for eviction of the tenants, to a decision in accordance with law There is no order in regard to costs in this appeal