

(1968) 02 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3022 of 1965

Amar Sarjit Kaur and another	Vs	APPELLANT
The Financial Commissioner and others		RESPONDENT

Date of Decision : 16-02-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) 02 P&H CK 0002

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : D.S. Nehra and Mr. K.S. Nehra, for the Appellant; S.P. Goyal, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—Amar Sarjit Kaur and her husband Pritpal Singh in their writ petition under Article 226 of the Constitution of India have prayed for quashing of an order, passed by the Financial Commissioner, Punjab, annexure "G". A few facts relevant for the disposal thereof may be noticed here. Petitioner No. 2 owned 31 bighas and 17 biswas of land situate in the revenue estate of Sangrur. He mortgaged the same with possession for a sum of Rs. 2110/- in favour of Sucha Singh, respondent No. 5. The transaction was entered in the revenue papers. Mutation No. 1620 evidencing the transaction was sanctioned on 20th August, 195b, annexure "B". Thereafter the mortgagee gave the land to Dharam Singh respondent No. 4 on lease vide entries in jamabandi 1953-54 and Girdawari 1954-55, annexures "C and D". In 1959, petitioner No. 2 transferred his rights of ownership in the land in favour of his wife, petitioner No. 1 by a regular registered deed on the basis of which necessary mutation was sanctioned on 2nd May, 1959. Dharam Singh in the month of December, 1963, applied under the provisions of the Pepsu Tenancy and Agricultural Lands Act 1955, hereinafter referred to as the Act, for the acquisition of proprietary rights in respect of the land. The Assistant Collector 1st Grade (Prescribed Authority) by

his order dated the 30th May, 1964, accepted his application to the extent that he was allowed to acquire the right, title and interest of the mortgagee therein (Annexure "E"), Respondent No. 4 filed an appeal against this order before the Collector, Sangrur, praying that the rights of the owner, namely, petitioner No. 1 should have also been conferred on him. The Collector dismissed the appeal by his order dated the 20th January, 1965, annexure "F". Respondent No. 4 did not rest here. He put in a revision petition in the Court of the Financial Commissioner (Planning) who accepted his prayer by his order dated the 29th July, 1965, and conferred on him right, title and interest not only of the mortgagee but also of the mortgagor, annexure "G". The petitioners alleged that this order was illegal, ultra vires, and without jurisdiction on the grounds as follows : -

(a) Respondent No. 4 is admittedly the tenant of Sucha Singh, respondent No. 5, who is a mortgagee with possession;

(b) A mortgagee with possession being a landowner as defined in section 2(f) of the Pepsu Tenancy and Agricultural Lands Act, 1955, and the tenant having been inducted by the mortgagee, he is entitled to acquire rights only of the mortgagee-landowner according to law;

(c) It is manifest that a tenant under "A" cannot be allowed to acquire rights against "B". The interpretation of the provision of the Act by respondent No. 1 is not in accordance with the object and the Scheme of the Act.

2. Dharam Singh, respondent No. 4, in his written statement pleaded that he had been a tenant under petitioner No. 2 long before he effected the fictitious mortgage of the land in favour of Sucha Singh in order to avoid the land being declared as surplus. He further urged that respondent No. 3 held that he was a tenant under Pritpal Singh long before the mortgage although conferred on him right, title and interest of the mortgagee alone. He went on to say that the impugned order was correct in law.

3. The Learned Counsel for the petitioner in order to show that respondent No. 1 could not have conferred right, title and interest of the mortgagor on Dharam Singh respondent No. 4 relied on the definition of the term "landowner" as given in section 2(f) and the provisions made in section 22 of the Act in regard to acquisition of proprietary rights by tenants which run as under : -

Section 2(f) -

Landowner has the meaning assigned to it in the Punjab Land Revenue Act, 1887 (Punjab Act XIII of 1887), and includes an allottee;

Explanation.-In respect of land mortgaged with possession, the mortgagee shall be deemed to be the landowner.

Section 22(1)

Subject to the other provisions contained in this Act, a tenant shall be entitled to acquire from his landowner in respect of the land comprising his tenancy the

right, title and interest of the landowner in such land (hereinafter referred to as the "proprietary rights") in the manner and subject to the conditions hereinafter provided.

(2) Every tenant intending to acquire proprietary rights shall make an application in writing to the prescribed authority in the prescribed manner, containing the following particulars, namely :-

(a) the area and location of the land in respect of which the application is made :

(b) the name of the landowner from whom proprietary rights are to be acquired;

(c) such other particulars as may be prescribed;

(3) The right conferred upon a tenant to acquire proprietary rights in respect of any land under this section may, if such tenant has sublet the land, be exercised by the sub-tenant to the exclusion of the tenant.

It will thus be seen that mortgagee with possession also is termed as "landowner" under this Act. Section 22 very clearly provides that the tenant will be entitled to acquire from his landowner in respect of the land comprising his tenancy, the right, title and interest of the landowner in such land. It is correct that the Assistant Collector in his impugned order, annexure "E" observed that although Dharam Singh's tenancy was created under the original landowner yet at the commencement of the Act he was a tenant of the mortgagee and continued to be his tenant since then. He allowed him to acquire the right, title and interest of the mortgagee only. The Collector did not affirm the findings of the Assistant Collector that Dharam Singh was first a tenant under the original landowner, namely, Pritpal Singh. He however, upheld the orders of the Assistant Collector on the ground that the appellant was a tenant under the mortgagee at the commencement of the Act. The learned Financial Commissioner without holding that Dharam Singh was a tenant to begin with under Pritpal Singh, conferred the right, title and interest not only of the mortgagee but also of the mortgagor, the owner of the land. In doing so he omitted to note the express provisions made in section 22 of the Act which lays down that the tenant will be entitled to acquire right, title and interest of his landlord who in this case is the mortgagee. Therefore the right, title and interest of the person in whom equity of redemption vested at the time could not have been transferred in favour of the tenant. The order of the Financial Commissioner is against law and the mistake is patent on the record. Respondent No. 4 can now apply under the relevant provisions of the Act for acquisition of right, title and interest of the owner of the land because the mortgage in favour of Sucha Singh had been redeemed.

4. For the reasons given above, the writ petition is allowed and the order of the Financial Commissioner, annexure "G" is quashed. There will be no order as to costs.