
(1971) 10 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 795 of 1970

Bhagwan Das and Others

APPELLANT

Vs

The Financial Commissioner, Punjab and Others

RESPONDENT

Date of Decision : 20-10-1971

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 18, 18(1), 4(5)
Punjab Security of Land Tenures Rules, 1956 — Rule 23(3)

Citation : AIR 1972 P&H 423

Hon'ble Judges : Harbans Singh, C.J;Gurdev Singh, J

Bench : Division Bench

Judgement

1. The main question arising in this appeal under Clause 10 of the Letters Patent against the order of a learned Single Judge, dated 20th of November, 1970, in Civil Writ 1354 of 1969, is whether a tenant is entitled to an order for purchase of land in his continuous occupation for a minimum period of 6 years u/s 18(1)(i) of the Punjab Security Land Tenures Act, 1953 (hereinafter referred to as the Act), if he makes the requisite application before an order for ejectment is made, but while proceedings for his ejectment are pending. Relying upon Bench decisions of this Court in Giani v. Financial Commr., Punjab 1969 P LJ 226 and Dhan Kaur v. The Financial Commr. 1970 P LJ 664 the learned Single Judge upheld the order of the Financial Commissioner, by which the appellant's application for purchase had been dismissed in view of the fact that an order for the appellant's eviction had been passed by the Assistant Collector First Grade as far back as 31st March, 1967, and had become final, having not been assailed before any superior authority.

2. The learned Judge against whose judgment the present appeal has been preferred was party to Giani's case 1969 P LJ 226. delivering the judgment of the Bench, his Lordships observed as follows:--

".....if at any time after he institution of the application u/s 18(1)(i) and before making the payment or deposit of the price or its first installment under

its sub-section (4)(b) read with Rule 23, the tenant ceases to be a tenant by reason of an order of ejectment having been passed against him by a competent authority, or by operation of law or of his own violation, he loses his right to purchase the land which was comprised in his erstwhile tenancy."

Reviewing earlier decisions, including *Har Sarup v. Financial Commr.*, 1965 Punj LJ 178, Sarkaria J., observed as follows:--

"As observed already, in all the four cases, namely, *Har Sarup's* case, 1965 Punj LJ 178; *Umrao's* case 1967 P LJ 249 *Malik Lah Labhu Masih Vs. Financial Commissioner Punjab and Another*, the learned Judges, either expressly or by implication, accepted the proposition that only a tenant whose status is subsisting at the date of the application u/s 18(1)(i) of the Act is entitled to purchase if he has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years. In none of these cases it has been held that the word "tenant" in Section 18(1) (i) is to be assigned a meaning different from or wider than that given in the definition of that term in Section 4(5) of the Punjab Tenancy Act and that is what flows from the plain language of Section 18. Once it is held that the status as "tenant" is a pre-requisite of the applicant's right to purchase, there seems to be no escape from the conclusion that he must retain that qualification at the time of the actual purchase or acquisition of ownership rights by depositing the price or its installment under sub-section (4)(b) of section 18. Prior to that stage, the proceedings may be called pre-purchase proceedings of an exploratory or preliminary character..... It is early after the determination of the aforesaid preliminaries, viz., eligibility under sub-section (1) and price under sub-sections (2) and (3), that the tenant actually exercises his right of purchase by depositing or paying the price or its first installment under sub-section (4) within the period prescribed by Rule 23(3) of the Punjab Security of Land Tenures rules, 1956.

xx xx xx "With utmost respect, therefore, I think that it is not correct to say that it is not necessary for the tenant-applicant u/s 18(1)(i) to retain its qualification as a tenant after the making of an application u/s 18(1)(i). This view is founded on the fallacy that the mere fact of making an application u/s 18(1)(i) by the tenant in continuous occupation for a minimum period of six years, immediately confers on him a vested right as purchaser of the land. Such an assumption, which is the basis of this view, is opposed to the express provisions of sub-section (4)(b) of Section 18, which are to the effect, that the tenant becomes the owner only on the deposit of the price or its installment. It is further respectfully submitted that the said view might lead to anomalous and startling results."

3. An attempt was made before the learned Single Judge to assail correctness of this decision by relying upon the Supreme Court decision in *Sahib Ram, etc. Vs. The Financial Commissioner, Punjab and Others*, , The learned Single Judge, however, distinguished that authority and held that the rule laid down in *Giani's* case (supra) by the Division Bench had to be followed.

4. Ch. Roop Chand, appearing for the appellant, contends that the controversy has been set at rest by the recent decision of their Lordships of the Supreme Court in Bhajan Lal v. State of Punjab 1970 P LJ 812(SC), wherein the following observations of Mahajan, J. in Har Sarup's case 1965 P LJ 178 were quoted with approval:

"But at the time when Section 18 application was filed, no order for eviction has been passed. Therefore, at that time, the relationship of landlord and tenant did exist. Mr. Daulta has not been able to point to me any provision of law which would make the eviction decree operative from the date of the eviction application. The mere fact that the tenants had incurred the liability for eviction by reason of non-payment of rent would not put an end to the admitted relationship of landlord and tenant between the parties. The liability only put an end to the aforesaid relationship when the eviction decree was passed. The eviction decree was passed long after the Section 18 application. Therefore, the present petition is liable to succeed only to the extent of Section 18 application, that is the tenants would be entitled to purchase the land. x x x x".

5. In Bhajan Lal's case 1970 P LJ 812 (SC), Shah J., with whom. A. N. Grover J., concurred, in dealing with the scope and effect of Sections 18 and 14-A of the Act, so far as they relate to the right of a tenant to purchase land in his occupation, observed as follows:

"It was urged that since Section 18 commences with a non obstinate clause, viz. "Notwithstanding anything to the contrary obtained in any law, usage or contract," "if a proceeding in ejectment is lodged against the tenant which ultimately is allowed, the tenant cannot make a claim during the pendency of the proceeding to purchase the land. To hold otherwise, it was urged would enable a tenant in default to defeat the claim in a suit in ejectment by commencing a proceeding for purchasing the land. We do not think that the expression. "Notwithstanding anything to the contrary contained in any law, usage or contract" whittles down the right of the tenant at the date when he makes a claim to purchase the land merely because the tenancy is liable to be terminated in a proceeding then pending for an order in ejectment u/s 14-A at the instance of the land-owner. Under the Act, the tenancy does not stand terminated merely because a proceeding in ejectment is instituted. The tenancy is determined only in the conditions prescribed by Section 9 and in the manner provided by Section 14-A. If a tenant is in default in payment of rent the land-owner desiring to recover rent due by the tenant may apply in writing to the Assistant Collector who shall thereupon send a notice to the tenant to deposit the rent due or give proof of having paid it. If the tenant fails to pay the rent or give proof of payment, the Assistant Collector shall, after a summary inquiry, if he is of the view that the tenant had not paid or deposited the rent, eject the tenant summarily and put the landowner in possession of the land concerned. But so long as the Assistant Collector has not passed the order ejecting the tenant the right of the tenant is not extinguished, he continues to remain a tenant and

being a tenant he is entitled to exercise his right to purchase the land."

6. In view of this clear pronouncement by their Lordships of the Court, neither the decision in Giani's case 1969 P LJ 226 nor in Dhan Kaur's case 1970 P LJ 664 which is based on the dictum in Giani's case, can be considered as laying down correct law on the point. This has been made clear recently in Abhey Ram v. Financial Commr., Haryana 1971 P LJ 388 wherein D. K. Mahajan J. with whom Gopal Singh J., concurred, summed up the legal position in these words:

".... the decision of the Supreme Court in Bhajan Lal's case 1970 P LJ 812 (SC), is clearly an authority for the view that if on the date of Section 18 application, there is no order of eviction, Section 18 application cannot be defeated on the ground that subsequently an order for the eviction of the tenant has been passed. The relevant date to determine whether there is relationship of landlord and tenant is the date when the Section 18 application is made. If on that date that relationship subsists, the tenant is entitled to purchase the land no matter that the order of eviction is passed against him on a latter date."

7. Turning to the facts of the case before us, we find that though the application for ejectment on the ground of non-payment of rent was made by the landowners on the 26th of July, 1966, it was still pending when the tenant applied for purchase u/s 18(1)(i) of the Act on the 3rd of October, 1966. Admittedly, on this later date no order of ejectment of the tenant existed and it was subsequently on 31st of March, 1967, that both the eviction and the purchase applications were allowed by the Assistant Collector First Grade. Since on the day of their application for purchase the appellants were still in possession of the land as tenants, in accordance with the rule laid down in Bhajan Lal's case 1970 P LJ 812 (SC) (supra), they were entitled to purchase. On this short ground, the appeal must proceed. We, accordingly, accept the appeal and, setting aside the judgment of the learned Single Judge, quash the order dated 30th April, 1969 of the Financial Commissioner.

8. As the learned Financial Commissioner had accepted the revision petition solely on the ground that the relationship of landlord and tenant did not exist between the parties on the 31st of March, 1967, the case is remitted to him to go into the other points that had been raised before him by the parties and may be relevant, and redetermine the Revision Petition in the light of the rule laid down in Bhajan Lal's case 1970 P LJ 812 (SC).

9. In the circumstances of the case when the fate of this appeal has turned on a recent decision of their Lordships of the Supreme Court, we consider it equitable to leave the parties to bear their own costs.

10. Order accordingly.