
(1965) 05 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 440 of 1963

Chhabila and Others	Vs	APPELLANT
The Commissioner, Ambala Division and Others		RESPONDENT

Date of Decision : 10-05-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1965) 05 P&H CK 0002

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

Bench : Single Bench

Advocate : G.C. Mital, for the Appellant; D.C. Gupta, for Respondents Nos. 4 to 10, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—The present petition under Articles 226 and 227 of the Constitution has arisen out of the following facts:

2. Sahi Ram deceased father of Chhabila, Amin Lal, Siri Chand and Jug Lal petitioners mortgaged his land for Rs. 6,000/- in favour of Lachhman Singh, Necessary mutation in regard to this transaction was sanctioned on 27th July, 1943. The mortgagee in turn gave the land to respondents Nos. 4 to 10 for cultivation as tenants-at-will. After the death of Sahi Ram, his four sons, the petitioners, got the mortgage redeemed on 1st September, 1958. Thereafter they instituted a suit in a civil court for possession of the land against respondents Nos. 4 to 10 alleging that on the redemption of the mortgage they were entitled to actual possession of mortgaged property and that the tenancy rights of respondents Nos. 4 to 10 extinguished as soon as the mortgage was redeemed. The suit was decreed and it was held that after the date of the redemption respondents Nos 4 to 10 were occupying the land as mere trespassers. The appeal preferred by the tenants was dismissed by the learned Additional District Judge, Hissar, on 12th April, 1960. Subsequently respondents Nos. 4 to 10 put in an application u/s 18 of the Punjab Security of Land Tenures Act (hereinafter

referred to as the Act) for the purchase of the above land which was subject-matter of mortgage and was in their possession. The petitioners resisted their prayer and in doing so urged that they were not tenants under them as already held by the Civil Court and as such their application was not maintainable under the law. The Assistant Collector First Grade, Hissar, agreed with him and rejected the respondents application. The tenant respondents filed an appeal against the above order which was accepted by the Collector, Hissar. The petitioners' appeal against the order of the Collector in the Court of the Commissioner, Ambala Division, remained unsuccessful and so also their review application. The petitioners alleged that the orders of the Collector, Hissar, dated; 28th April, 1961, and of the Commissioner dated 11th October, 1961, and 20th December, 1962, were without jurisdiction and liable to be set aside on the ground that respondents Nos. 4 to 10 were trespassers on the land-alter redemption of the mortgage on 1st September, 1958 and so the relationship of landlord and tenant did not exist between them when the application under S. 18 of the Act was filed. They also urged that the judgments and decrees of the Civil Courts holding respondents Nos. 4 to 10 as mere trespassers were binding between the parties and the Revenue authorities should have followed them.

3. There is no doubt about the facts that the land belonged to the petitioners which had been mortgaged by their father in favour of Lachhman Singh who had inducted respondents Nos. 4 to 10 as tenants-at-will under him. It is equally proved that after the death of Sahi Ram, the petitioners, his sons, redeemed the mortgage on 1st September, 1958. They also succeeded in obtaining a decree for possession of the land against respondents Nos. 4 to 10 in a Civil Court. The learned counsel, for the respondents contended that the Collector could ignore the judgments and decrees of the Civil Courts as laid down in section 23 of the Act. This section provides that no decree or order of any court or authority and no notice of ejectment shall be valid save to the extent to which it is consistent with the provisions of this Act. According to him what respondents Nos. 4 to 10 should have proved in order to successfully prosecute their application u/s 18 of the Act was that they had been inducted as tenants-at-will by the mortgagee and no-more. In this connection he relied on the definition of the term "Landowner" as given in section 2(1) of the Act. This definition provides that in respect of land mortgaged with possession, the mortgagee shall be deemed to be the landowner. The learned counsel for the petitioners; on the other hand argued that respondents Nos. 4 to 10 should have-proved not only that they occupied the land as tenants at-will under the mortgagee but also that their settlement by the mortgagee was a bona fide one. This they failed to allege and prove before the Civil Court and as such the judgments and decrees of the Civil Courts were not inconsistent with the provisions of the Act and were binding on the parties. In support of his arguments he relied on a Bench decision of this Court in *Bhola v. Jhundoo* 1964 P.L.J. 200. In the reported case a mortgagee had settled a tenant on the land mortgaged with him and on redemption" of the mortgage the tenant claimed that the mortgagee was a landowner within the meaning of the Pepsu

Tenancy and Agricultural Lands Act and such a tenancy could not be terminated except in accordance-with the provisions of sections 7 and 7-A. It was held:

An agricultural lease created by the mortgagees may be binding on the mortgagors even after the redemption of the mortgage provided it is of such a character that a prudent owner of property would enter into it in the usual course of management. The Pepsu Tenancy Act makes no distinction between the mortgagor and the mortgagee and both of them are land-owners within the meaning of the Act, and the only question for determination is whether the tenant who claims protection under the Act, is one whose settlement by the mortgagee was permissible.

This case no doubt supports the petitioner's view. Therefore, it cannot be successfully urged by the respondents that the judgments and decrees of the Civil Courts were inconsistent with the provisions of the Act. These were binding between the petitioners and respondents Nos. 4 to 10 and so should have been given effect to by the Collector and the Commissioner while passing the impugned orders.

4. For the above reasons, the petition is allowed and the impugned orders are quashed and that of the Assistant Collector, First Grade, Hissar, dated the 23rd January, 1961, is restored. The parties are left to bear their own.