

(2012) 08 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No's. 2374 to 2377 of 1990

Dhani Ram and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 30, 52

Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 — Section 3

Punjab Tenancy Act, 1887 — Section 77, 77(3)(d)

Citation : (2013) 169 PLR 583

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Amit Jain, Mr. C.B. Goel and Mr. Nitin Jain, for the Appellant; Ashish Gupta, A.A.G., Haryana for Respondent No. 1 and Mr. Jaivir Yadav for Respondent Nos. 2 to 10, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—All the appeals are filed by persons claiming to be the proprietors of the land, which was acquired by the government under the Land Acquisition Act. The dispute has come through a person, who was asserting right as an erstwhile occupancy tenant in whom the property was claimed to have been vested. The admitted case is that the private respondents admittedly were the occupancy tenants in respect of Patties which were identified as Patti Dhanna, Patti Mathara and Patti Nathan in the share of 1/4th, 1/4th and 1/3rd respectively. The Reference Court found that the property which was acquired had been reserved as "common land" but had not become vested with the Panchayat but it belonged to the proprietors and the proprietor's share in the shamlat deh must be taken as entirely to the benefit of occupancy tenants in whom the vesting had taken place. In so holding, the Reference Court found that the entire amount of compensation that was payable to the erstwhile tenancy claimants. The learned counsel for the proprietors-appellants contends that the respondents had got right to the property to whatever extent that they were

entitled under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereafter called as the "1952 Act") and to the properties that were held in possession by them which were mutated in their names. As far as the property, which had been set apart as common land and comprised in shamlat deh, the land owners themselves had filed a case before the Assistant Collector, 1st Grade, Gurgaon in which it was specifically held that the property did not belong to the Gram Panchayat but the property belonged only to the plaintiffs, who had initiated the action before the Assistant Collector. Learned counsel would, therefore, contend that subsequent to the statutory vesting that took place under the 1952 Act, there had been an intervening declaration that had constituted an acquisition of title to the property in favour of the appellants among other proprietors. If any of the respondents would stake claim to the property as belonging to them, unless they had sought for a declaration and secured such a right against the proprietors, who were denying their contentions of the erstwhile occupancy tenants, they cannot obtain any right. Learned counsel would refer me to the decision of Full Bench in Shiv Charan Vs. The Financial Commissioner, Revenue Department and Others, that held that a declaration through a Civil Court would become an imperative in any case where the dispute arose as to who was entitled to the property u/s 77(3)(d) of the Punjab Tenancy Act, 1887.

2. This contention is refuted by the counsel appearing on behalf of the respondents by contending that Section 3 of the 1952 Act was unexceptional in that it vested all rights including the share of the land owner in shamlat with respect to the land concerned and whatever rights which the landlord had, would stand extinguished. Learned counsel would also make reference to the decision of this Court in Nasib Singh v. State of Haryana, 1991 P.L.J. 387 that dealt with the effect of Section 3 to hold that every occupancy tenant on enforcement of the Act ipso facto acquired share in the shamlat unless he exercised the option of not acquiring the right by giving a notice to the Collector. The Act made the occupancy tenants owners in the same measure and with the same rights as those of the landlord under whom they were occupancy tenants with the result that whatever rights, title, interest including a contingent interest and the share of shamlat that the proprietors possessed, the same would become vested with the occupancy tenants. Learned counsel would also took me to the relevant portions of the order passed by the Reference Court that dealt with the details of how the property became divided amongst the proprietors and tenants on the one hand and the property that had been set apart for a common purpose. The order gives details of the fact that village Nainwal had 1619 bighas 12 bishwas of land out of which shamlat deh measured 1251 bighas 4 biswas and munkasma malkan measured 363 bighas 10 biswas. This latter extent that was identified as owned by the individual proprietors included all the properties that had come to the erstwhile occupancy tenants.

3. The only question is whether the property which formed part of shamlat deh would continue to remain vested with the proprietors notwithstanding the 1952 Act. The further question would be whether the intervention of the decree in the

suit initiated before the Assistant Collector took away any of the rights which the occupancy tenants could claim and whether it was essential that an erstwhile occupancy tenant should have filed a suit before the Civil Court in the manner laid down by the Full Bench. To my mind, the answer lies by reading the provisions of Punjab Tenancy Act and 1952 Act together and the nature of adjudication that a Reference Court renders u/s 30 of the Land Acquisition Act. Under the Punjab Tenancy Act of 1887 any dispute relating to a right of occupancy or a claim by a landlord to prove that a tenant was not a tenant would require to be adjudicated by a Civil Court. In this case, this is verily the issue of whether a particular right of occupancy, which constituted a vesting, is asserted by the erstwhile occupancy tenants and the proprietor seeks to contend that the erstwhile occupancy tenant did not have such right in relation to the property, which was acquired. The declaratory right as contemplated under this Section must be read in the context of what would fall for consideration before a Civil Court if rival rights to the property are claimed by both the parties. Section 3 of the 1952 Act leaves nothing in residue for a land owner in relation to any property which was held by a tenant in his occupancy right and which would include a property, which is ceded to a common purpose and stood consigned to shamlat deh. Section 3, therefore, allows for no right for a proprietor to claim after the vesting took place in the year 1952. It must be noticed that the 1952 Act itself does not contemplate any further act of transfer by the State or by the land owner. It makes an automatic vesting and all that would be necessary for a person in respect of a property, which is retained in his possession could be to secure a mutation treating him as the owner. However, in relation to the property which is constituted in shamlat deh, it would still stand in the name of the proprietors but the user alone could be referred to as for common purpose.

4. Learned counsel appearing for the appellants would contend that in view of the fact that a suit was filed and a declaration was obtained against the Panchayat, it must be taken as an act where the proprietors have asserted a right in themselves that constituted a challenge to the incident of vesting in favour of erstwhile occupancy tenant. Consequently, a suit had to be filed to declare the erstwhile tenant's right to establish that notwithstanding the order passed by the Assistant Collector, he has got right to the property. In my view, such a procedure must be understood as a procedure where a title is adjudicated by a Civil Court. The manner in which the title is to be adjudicated as contemplated u/s 77 and what the Full Bench espouses must be resolution of a dispute not by Revenue Authorities but by a Civil Court of competent jurisdiction. In this case, if the property had not been acquired and it was merely an issue of property coming back to owners for whatever reasons, such as, say, when the extent of shamlat deh was sought to be reduced in the village or in any other manner where the common purpose became necessary, a declaratory action might have become necessary. In this case, the property which was reserved in common, had lost such common purpose in view of the acquisition of the property by the Government. The reversion of right to the erstwhile proprietors

would have required an adjudication in a case where the occupancy tenants claimed a right to the property. That adjudication, by virtue of the acquisition by the Government has come about through the reference u/s 30 of the Land Acquisition Act. I would understand that in view of the provisions of the Land Acquisition Act vesting exclusive jurisdiction to a Civil Court to which a case is referred for adjudication, no other Court could have entertained the suit. Section 30 of the Land Acquisition Act states that if there was any dispute in relation to the amount of compensation that had been settled, the same would be referred to the decision of the Court. Section 52 bars any suit or other proceeding against any person for anything done in pursuant to the Act without giving to such a person a month's notice in writing of initiation of proceedings and the cause thereof. The moment, the reference is made to the Court which adjudges the entitlement to the amount, which is determined, it is on the basis of entitlement to the property itself. If a fresh adjudication is made by a reference to the Court, it would make unnecessary for any party to seek for declaration in any other civil suit. In this case, there would have been a compulsion for a tenant to seek for a declaration in a Civil Court relating to the property by virtue of an intervening order passed by the Assistant Collector but that was obviated by the fact that there was a reference to the Court u/s 30 of the Act. The adjudication that is made by the Reference Court is an adjudication that was possible in law and which Section 77 of the Tenancy Act contemplates and which the Full Bench also refers to. I would not, therefore, look for any independent action for a tenant to assert by filing a suit. It is before the Reference Court that he had established the right that notwithstanding the judgment that was passed before the Assistant Collector, they were entitled to the property.

5. Learned counsel appearing for the respondent points out that the suit instituted by the proprietors themselves were not asserting their exclusive right so as to make an inference that it denied the right to the erstwhile occupancy tenants. As a matter of fact some of the parties who were shown as plaintiffs are indeed the respondents erstwhile occupancy tenants themselves. Lal Singh, who was the 1st plaintiff in the suit before the Assistant Collector is a respondent in RFA No. 2375 of 1990 and 3rd plaintiff Mata Din is a party-9th respondent in RFA No. 2376 of 1990. The suit before the Assistant Collector itself was in a representative capacity and if the proprietors had filed the action seeking for declaration against the Gram Panchayat, it must be taken that they had acted in trust on behalf of the persons, who were actually entitled to the whole of the amount. I have already, observed that Section 3 of the 1952 Act allowed for no residue for a land owner to assert in respect of shamlat deh as well. The right to a share which the proprietor had in shamlat deh must be taken as a share that must be relatable to the entitlement of the occupancy tenants. That was how the Reference Court has dealt with and I do not find any error in the adjudication made. The award is confirmed and the appeal is dismissed.