
(1966) 09 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 234 of 1963

Hari Singh Zaildar and Others

APPELLANT

Vs

The Military Estate Officer and Another

RESPONDENT

Date of Decision : 05-09-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 245, 246
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 9
Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 2

Citation : (1967) 1 ILR (P&H) 869

Hon'ble Judges : Mehar Singh, C.J.; Daya Krishan Mahajan, J

Bench : Division Bench

Advocate : B.S. Chawla and S.K. Pipat, for the Appellant; D.C. Ahluwalia, for the Respondent

Final Decision : Dismissed

Judgement

Mehar Singh, C.J.—The facts in this appeal under Clause 10 of the Letters Patent by Karl Singh and seven others, Appellants, from the order, dated March 13, 1963, of a learned Single Judge, are not in controversy.

2. In the Arnkala Cantonment there is a certain area of agricultural land with the military authorities, which land was given on lease by the Military Estate Officer. Arnkala. Respondent 1 to Behari Lal, who introduced the Appellants on the land under a sub-lease. The lease money throughout was being paid by Behari Lal who in turn received the same from the Appellants. This continued till the eviction of Behari Lal. After that the Appellants did not pay any lease money or rent to anybody. Respondent 1 started proceedings against the Appellants u/s 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1953 (Act 32 of 1958), hereinafter to be referred as "the Central Act", and, in due time, finding them unauthorised occupants of the land, made an order of eviction against them. The Appellants went in appeal against that order u/s 9 of the Central Act to the Appellate Authority, the District Judge of Ambala, Respondent 2, who, on

April. 18, 1962, dismissed that appeal. It was after that that the Appellants filed a writ petition under Article 226 of the Constitution questioning the legality of the orders of Respondents 1 and 2 and seeking that the same be quashed. The petition has been dismissed by the learned Single Judge neatening the arguments urged on behalf of the Appellants, which arguments need not be stated here as the same arguments have been urged in this appeal as well and are considered below.

3. It is first urged by the learned Counsel for the Appellants that having regard to the definition of the word "premises" in Section 2(c) of the Central Act, when compared with the definition of the same word in Section 2(c) of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (Punjab Act 31 of 1959), hereinafter to be referred as "the Punjab Act", it becomes evident that the Central Act does not and the Punjab Act does, apply to agricultural land. As the Respondents have not proceeded under the Punjab Act, their proceedings taken against the Appellants under the Central Act are without jurisdiction. In the Central Act, in Section 2(c), the definition of the word "premises" is--

"premises" means any land or any building or part of a building and includes (the rest is not material here),

and in the Punjab Act in Section 2(c), the definition of the same word reads--

"premises" means any land, whether used for agricultural or non-agricultural purposes, or any building or part of a building and includes (the rest is not material here).

4. On comparison of the two definitions of the same word it is apparent that the language used is exactly the same except that between the words "land" and "or", in the Punjab Act, are added the words "whether used for agricultural or non-agricultural purposes", which words are not to be found inserted between those two words in the Central Act. It is on the existence of those words in Section 2(c) of the Punjab Act and absence of the same from Section 2(c) of the Central Act that the learned Counsel has based his argument to say that while in the Punjab Act the word "premises" covers agricultural land but that is not so as that word is defined in Section 2(c) of the Central Act. On comparison of the two definitions of the word "premises" in the two sections nothing more emerges than this, that the additional words in Section 2(c) of the Punjab Act merely give the scope and extent of the meaning of the word "land" as used therein, which clarification has not been given in Section 2(c) of the Central Act, but that does not mean that the clarification given in Section 2(c) of the Punjab Act, in any way, detracts from the full meaning of the word "land" in Section 2(c) of the Central Act, which word even there includes within its meaning agricultural land. As much has been observed by the learned Single Judge. This argument is, therefore, untenable.

5. The only other argument urged by the learned Counsel for the Appellants is that on the view as above that the Central Act also is a legislation concerning

agricultural land, it has to be held to be unconstitutional because, so the learned Counsel contends, legislation on agricultural land is within the exclusive legislative field of the State being entry 18 in List II--State List--of the Seventh Schedule to the Constitution. Entry 18 in List II reads--"Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization." The learned Counsel for the Appellants urges that relationship of landlord and tenant as alleged to exist between the Appellants and Respondent 1 on behalf of the military authorities and the question of transfer or alienation of lease rights to the Appellants, are all matters which fall squarely within entry 18 of List II about which the valid and applicable legislation is the Punjab Act. He has referred also to entry 32 in List I--Union List of the Seventh Schedule to the Constitution, which entry reads--"Property of the Union and the revenue therefrom but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides." He contends that this entry is not attracted so as to make the Central Act valid so far as the agricultural land in question is concerned, because this entry is excluded by the exclusive entry 18 in List II in favour of the Punjab State. Entry 18 in List II is confined to land and various rights in and over land and some matters connected therewith. Of course transfer and alienation of agricultural land and relationship of landlord and tenant are specifically dealt with in this entry. But entry 32 in List I, the exclusive list for the Parliament, deals with property of the Union and the word "property", not having been defined in the Constitution, would include all classes and kinds of property, including of course agricultural land. Actually entries 87 and 88 in List II use the words "property other than agricultural land", making it clear that agricultural land is obviously included within the meaning and scope of the word "property". So it comes to this, that under entry 32 of List I, Parliament has the exclusive power to legislate on property of the Union, which includes even agricultural land, but according to entry 18 in List II the Legislature of the State has the exclusive power to legislate with regard to agricultural land. Of course entry 32 in List I makes the legislative power of the Parliament subject to legislation by the State with a further saving that the Parliament may by law provide otherwise. In the present case the Parliament has by law provided otherwise by the Central Act on the subject of agricultural land being the property of the Union and if the matter was left only with entry 32 in List I, it is obvious that the Central Act, so far as the agricultural land of the Union is concerned, must prevail. But entry 18 of List II has also to be considered. The Central Act falls clearly under the legislative field of the parliament and covers property as agricultural land also, but in this respect this legislation partly shades into the legislative field of the State under entry 18 of List II. As the entries in the Seventh Schedule are to be read in widest possible scope, the legislative power of the Parliament in entry 32 of List I cannot be taken as abridged by the legislative power under entry 18 in List II in favour of the State. In this approach it is the Central Act which is applicable to the agricultural land of the Union with

the military authorities and not the Punjab Act, so that the decisions of Respondents 1 and 2 have been made within jurisdiction. In this respect the learned Counsel for the Appellants has also made reference to Sajjan Singh Vs. State of Rajasthan, , in which, with reference to the Seventeenth Amendment of the Constitution, their Lordships have held that "the contention that since the Constitution (17th Amendment) Act, 1964, is a legislative measure in relation to land falling within entry 18 of Schedule 7, List II, it falls within the exclusive powers of the State Legislatures and is ultra vires the power of Parliament under Articles 245 and 246 of the Constitution is misconceived. What the impugned Act purports to do is not to make any land legislation but to protect and validate the legislative measures in respect of agrarian reforms passed by the different State Legislatures in the country by granting them immunity from attack based on the plea that they contravene fundamental rights." It is not quite clear how this is helpful to the argument on the side of the Appellants.

6. These are the two arguments that have been urged in this appeal, as was the case before the learned Single Judge and both are arguments which do not prevail, as the same did not with the learned Single Judge. The appeal is, therefore, dismissed, but there is no order in regard to costs.