(2007) 09 P&H CK 0160

In the Punjab And Haryana At Chandigarh

Harphool Singh and Others APPELLANT

Vs

Financial Commissioner Revenue and Others RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 20, 22

Citation : (2008) 149 PLR 823 : (2008) 1 RCR(Civil) 460

Hon'ble Judges : K.S. Garewal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.S. Garewal, J.—Petitioners have challenged the orders passed in favour of Dalip Singh and Surjit Singh (respondents 5 and 6) by the Revenue Authorities where under the respondents were granted proprietary rights over lands which they were possessing as tenants. This was done under the provisions of Section 22 of the Pepsu Tenancy & Agricultural Act, 1955 (hereinafter referred to as the Act) on the basis of the respondents'' application decided on May 4, 1967, by Assistant Collector, Ist Grade (Annexure P-15).

2. The land in dispute is 177 Kanals (approximately 22 acres) situated in Narainpura alias Chaurwala, Tehsil Sirhind, District Patiala (now Fatehgarh Sahib). In the application filed in form VI under Rule 14 Dalip Singh and Surjit Singh applied to the Collector Agrarian (Prescribed Authority) pleading that they were tenants u/s 20 of the Act and wished to acquire proprietary rights in the land comprising of the tenancy. Particulars of the land were given in the enclosed table. Documents in proof of title that they were tenants, as defined in Section 20 of the Act, were also attached. Particulars of the land were enclosed. Lastly, the applicants prayed that compensation payable by them may be determined. The names of the landowner was mentioned as Raghbir Kaur wife of Jaswant Singh and Kamaljit Kaur wife of Joginder Singh.

3. The above particulars of the original application filed by Dalip Singh and Surjit

Singh were necessary as an introduction to the case since the entire edifice of the proceedings under the Act, which are under challenge in this petition, has been built up on the proceedings commenced by the tenants for acquisition of proprietary rights.

4. Section 22 of the Act entitles a tenant to acquire from his landowners, the landowners'' right, title and interest in the land comprising his tenancy. The tenant is required to file an application in writing before the Prescribed Authority containing particulars, details of the area and location of the land, the name of the landowner etc. The application is required to be in form VI of Rule 14 of the Pepsu Tenancy & Agricultural Rules, 1958 (hereinafter referred to as the Rules).

5. Tenant has been defined in Section 2(k) of the Act which says that the term has the same meaning as has been assigned to it in the Punjab Tenancy Act, 1887 but excludes a person who holds right of occupancy or a person who is relative of the tenant within the meaning of Section 2(g)(2) of the said Act.

6. This case has a long history. The land had been mortgaged by one Harnam Kaur to Amrao Singh in 1901. The rights of the mortgagor, in due course of time, came to be inherited by Nand Singh through Sher Singh and Suraj Kaur who in turn had inherited these rights from Harnam Kaur, the original mortgagor. On April 3, 1961 Nand Singh (through his wife Iqbal Kaur) sold the equity of redemption through two sale deeds to Harphool Singh and others. The sale deeds are Annexures P-7 and P-8. The sale deeds contained a recital that land was mortgaged with possession with the heirs of Rattan Kaur daughter of Amaro Singh for Rs. 6,200/- and was sold to the vendees for Rs. 24,500/-. Since the land was under mortgage, Nand Singh through his wife Iqbal Kaur had sold the equity of redemption in the land and the well owned by him. The vendees were entitled to file an application for taking possession of the mortgaged land by getting the mortgage redeemed.

7. On the basis of acquiring the equity of redemption, Harphool Singh and others (the vendees under the sale deeds dated April 3, 1961) filed an application u/s 4 of the Punjab Restitution of Mortgage Land Act, 1938 on July 10, 1961 before Collector, Fatehgarh Sahib (Bassi) against the successors-in-interest of the original mortgagee Amrao Singh. The Collector allowed the application on February 17, 1966 and directed that the mortgage stood extinguished and that the applicants be put in possession of the mortgage property. The order of the Collector is Annexure P-10. Consequent upon the redemption of the mortgage, possession of the property was delivered to Harphool Singh and others on June 23, 1966, copy of the Daily Diary Register of Patwari is Annexure P-11.

8. Therefore, the main question to be considered in this case would be whether the tenants who claimed to be in possession of a portion of the mortgaged property could maintain an application for claiming proprietary rights over the said land. After the application of the tenants was allowed on May 4, 1967 Harphool Singh appealed to the Collector on May 12,4967 who on March 29,

1969 accepted the appeal and remanded the case back to the Prescribed Authority. The tenants challenged the Collector''s order in revision before the Financial Commissioner. The revision was dismissed in limine on June 25, 1970 whereby the remand order was upheld.

9. After remand the proceedings before the Assistant Collector Ist Grade Fatehgarh Sahib commenced again. On May 23, 1972 the Collector again found in favour of the tenants and granted them proprietary rights over 177 Kanals 4 Marlas of land holding that "it is clear as the sun that Shri Jharu (father of Dalip Singh and Surjit Singh respondents 5 and 6) is an old tenant continuing from before the year 1956 and in the Bando-bas legally prepared, his father was also a tenant of the land in dispute. After the year 1956 the cultivation is entered in his name and in the name of his sons and they are cultivating the land on the spot." Harphool Singh and others filed an appeal before Collector, Patiala. The appeal was dismissed on August 10, 1973. Harphool Singh and others'' revision before the Financial Commissioner, Patiala Division was also dismissed on July 15, 1975. Finally the revision petition was dismissed by the Financial Commissioner on January 18, 1983.

10. Learned Counsel for the petitioners has laid great stress on the following observation of the Collector, in his order dated March 29, 1969:

On the date the order was passed the mortgagee had no right, title or interest in this land because the same had been extinguished by the order redeeming the mortgage passed earlier. The tenants, therefore, could not acquire any right of mortgagee.... The next question to be decided is whether the tenant can acquire right, title or interest vested in view of his tenancy. This is a separate question and can be gone into independently.

11. The central argument of the petitioners'' counsel is that all that the tenants could acquire was the right, title and interest of the landowner. If the tenant was holding land under a mortgagee he could only acquire the right, title and interest of the mortgagee. The tenant could not acquire the equity of redemption and, therefore, could not step into the shoes of the mortgagor. In the present case, on the date the order was passed, the mortgage stood redeemed and the rights of the mortgagee stood extinguished. Therefore, the tenant under the mortgagee was left without any rights which he could acquire. Reliance was place on Amar Sarjit Kaur and Anr. v. The Financial Commissioner Punjab and Ors. 1968 P.L.J. 134. The facts and circumstances of Amar Sarjit Kaur''s case (supra) were quite similar to the present case. Therein land had been mortgaged with possession in favour of one Sucha Singh in 1953, who leased the land to Dharam Singh in the same year. Dharam Singh applied for acquiring proprietary rights in 1963. His application was accepted to the extent that he was allowed to acquire the right, title and interest of the mortgagee. Dharam Singh filed an appeal praying that he should also be given rights of the owner (mortgagor). The Collector dismissed the appeal. However, the Financial Commissioner accepted his prayer and conferred on him right, title and interest not of the mortgagee but of the

mortgagor. In the writ petition the order of the Financial Commissioner was set aside by holding as under:

Where the tenant under the mortgage applied for the acquisition of proprietary right, held, as at the time of the commencement of the Pepsu Tenancy and. Agricultural Lands Act, the tenant was a tenant of the mortgagee and continued to be his tenant since then, therefore, he will be entitled to acquire right, title and interest of his landlord who in this case is the mortgagee. 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.

Secondly reference was made to Dalip Singh v. Financial Commissioner, Punjab and Ors. 1964 Lahore Law Times 24 to advance the argument that a tenant given possession by mortgagee did not hold the land under the mortgagor nor was he liable to be pay rent to the mortgagor, such a tenant was the tenant of the mortgagee. Thirdly, reference was made to Bhag Singh and Ors. v. Financial Commissioner 1979 P.L.J. 423 in which it was held that a tenant inducted by a mortgagee could not file an application to acquire proprietary rights against the mortgagor.

12. It is quite apparent from the narration of events that Harphool Singh and others acquired the equity of redemption in 1961, filed for redemption of mortgage soon thereafter. The mortgage was redeemed in 1966. On the other hand, the tenants filed an application for purchase of proprietary rights in 1964 against the mortgagees but at that time Harphool Singh''s application for redemption was pending. This application was decided in 1966 whereas the tenants'' application for purchase was decided in 1967 by which time the mortgage had been extinguished. The tenants had been inducted by the mortgagee, they enjoyed no relationship with the mortgagor who had succeeded in redeeming of the mortgage.

13. The Collector had while passing remand order in 1969 appreciated this point (Annexure P-16) but some how the Revenue Authorities continued to hold the tenants entitled to acquire proprietary rights. They consistently missed the point that the tenants could acquire the rights enjoyed by mortgagee but the mortgage stood extinguished so did all the rights of the tenants under the mortgage stood extinguished. The tenants could not acquire the rights of the petitioners who had redeemed the mortgage. This has been the consistent view of this Court as given in Amar Sarjit Kaur (1968), Dalip Singh (1964) and Bhag Singh and others (1979) case.

In view of the above discussion, this petition is allowed. Orders Annexures P-1 to P-4 are hereby quashed.

