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**(1994) 12 P&H CK 0074**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Writ Petition No. 15535 of 1993**

Hazara Singh and Others

APPELLANT

Vs

The Financial Commissioner and Others

RESPONDENT

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**Date of Decision : 13-12-1994**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Punjab Tenancy Act, 1887 — Section 8

**Citation : (1995) 110 PLR 110**

**Hon'ble Judges : S.S. Grewal, J;M.L. Koul, J**

**Bench : Division Bench**

**Advocate : R.K. Battas, for the Appellant; P.S. Kadian, D.A.G. for Respondent  
Nos. 1 to 3 and Ashok Gupta, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

S.S. Grewal, J.—This petition is directed against the order of Financial Commissioner, Haryana, dated 14.7.1993 (Annexure P-1) confirming the order of Commissioner, Ambala Division, Ambala (Annexure P-3) and order of the Collector, Ambala dated 9.12.1986 (Annexure P-5) whereby Garibu deceased now represented by Purni Devi and other legal representatives was declared as occupancy tenant u/s 8 of the Punjab Tenancy Act, 1887 (hereinafter referred to as the Act) in respect of the land in suit measuring 49 Kanals 4 Marlas situated in village Boron tehsil Naraingarh district Ambala.

2. In brief facts relevant for the disposal of this petition are that Garibu filed an application u/s 77(2) (d) of the Act against the present petitioners before the Assistant Collector Ist Grade, Naraingarh. It was pleaded that Mangta father of Garibu was inducted as a tenant on the land in suit under Chhajju predecessor-in-interest of Hazara Singh and others, the present petitioners on payment of Rs. 80/- per annum as shown in Khasra Girdawri for the year 1944. Thereafter on the basis of continuous and long possession of the suit land for over 30 years by the said tenant and later or that of his son Garibu or his legal representatives,

they had become occupancy tenant in respect of the said land, as there was no increase in rent and they had also installed a tube-well in the year 1976-77 without any objection from the side of Hazara Singh and others, the present petitioners and land owners who had purchased the land in dispute from the earlier land-owners in the year 1968. In reply the present petitioners pleaded that no specific agreement for creation of occupancy tenancy was entered into between the parties at the time of the inception of the tenancy, and, that Mangta and later on his son Garibu deceased respondent (now represented by his legal representatives Purni Devi & others) were in occupation of the land in dispute only as a tenants-at-will and that there has been increase in annual rent from Rs. 80/- per annum to Rs. 115/- per annum as shown in Khasra Girdawri for the year 1947-48 and later on this rent was increased to Rs. 200/- per annum in the year 1949-50. The suit filed by Garibu deceased-respondent was, however, dismissed by the Assistant Collector Ist Grade, Nargaingarh vide his order dated 24.3.1986. Garibu deceased-respondent filed appeal before the Collector which was accepted and said decision was upheld right upto the Financial Commissioner, Haryana.

3. The learned counsel for the parties were heard.

4. In the instant case, admittedly Garibu or his father Mangta were continuously in occupation of the land in dispute for over 30 years as tenants. It is also not disputed that the present petitioners became owners in possession of the land in dispute after they purchased the same in the year 1968 or thereabout, and, that Garibu as a tenant had installed his tube well in the land in dispute in the year 1976-77 without any objection from the side of the petitioners. Admittedly, there was no written agreement between the original land-owners, and, the original tenant about the nature of the tenancy at its very inception. Nor is there any subsequent revenue entry on the record which would in any manner indicate that Garibu or his father Mangta were occupying the land in suit as occupancy tenants.

5. Khasra Girdawri entries for the year 1944-45 do reveal that the tenant was paying rent at the rate of Rs. 80/- per annum. The annual rent was increased to Rs. 115/- per annum in the year 1947-48 and from Rabi 1949 onwards annual rent payable by the tenant was Rs. 200/-. Obviously, it is a case where increase of rent has been made after the inception of the tenancy on more than one occasion. It is true that tube-well was installed much before the present dispute has arisen between the parties concerning the nature of tenancy. Garibu tenant was given electric connection and for this purpose he must have submitted an application to the competent authority. In case Garibu had installed the tube-well as an occupancy tenant, normally this fact sought to have been mentioned in the application for getting the electric connection from the competent authority. Thus from non-production of either the application or the material evidence concerning the nature of tenancy much before the dispute arose between the parties, an adverse inference can reasonably be drawn against the tenant that he was not occupying the land in suit as an occupancy tenant.

6. In Single Bench Authority of this Court in Muni Ram and Ors. v. Phulla and Lalu 1974 P.L.J. 369 after considering various other authorities of this Court in Tota Ram v. Rana Bashisht Singh Chandra 1952 L.L.T. 1 Devki Nandan and Ors. v. Shiv Lal 1957 P.L.J. 47 Anant Ram and Ors. v. Lakhbir Gupta 1962 P.L.J. 20 and Raghbir Singh v. Beli Ram (1967)69 P.L.R.D. 396 it was observed as under :-

"The following propositions of law are firmly settled :-

(1) The intention of the landlord not to eject the tenant for ever should be seen as at the time of the inception of the tenancy. Any subsequent intention cannot ordinarily have any effect on the nature of the agreement, which, came into existence at the time of the commencement of the tenancy.

(2) Mere length of possession does not entitle a tenant to acquire occupancy rights in the land in his possession as a tenant.

(3) The intention behind the wide scope left for Section 8 of the Punjab Tenancy Act is:

(a) not to restrict the tenant in any way from establishing his right of occupancy; and

(b) to pre-suppose the existence of a large set of conditions in which occupancy rights can arise outside the scope of Section 5 and 6 of the Punjab Tenancy Act.

(4) In cases where circumstances exist from which an inference of an implied promise not to eject a tenant for ever can be raised, the burden of rebutting the said presumption must lie on the landlord, and if the landlord does not discharge that burden, effect should be given to the presumption and the tenant's claim to the occupancy tenancy should be accepted.

(5) A very strong presumption of the implied promise not to eject a tenant, and, therefore, of the existence of an occupancy tenancy in favour of such a tenant can be raised:-

(a) where a tenancy has lasted for many years during which there has been a rise in prices of agricultural produce and it is proved that no effort was made by the landlord to enhance the rent; and

(b) Where despite the existence of a stray entry which is inconsistent with the preceding and the subsequent entries over a large number of years, circumstances show that there was no intention to raise the rent or to recover anything for the owner from the tenant."

7. The aforecited authority in Muni Ram's case was followed by another Single Bench Authority of this Court in Rattan Singh and Ors. v. The Financial Commissioner Haryana and Ors. 1986 P.L.J. 531 However, in the latter authority in Rattan Singh's case the first tenant remained in possession of the land in dispute in record of rights relating to 1877, 1889-90 and 1893-94 and thereafter the second tenant remained in occupation till 1902-03. Thereafter his three sons

were shown as tenants in the records of rights uptill 1946-47. It was observed by the single Judge that such a long possession was indicative of the intention of the landowners not to evict the tenant and secondly that the Chakota was only 6 per cent of the produce and the same was considered to be nominal rent because the landowners could claim rent to the extent of 1/3rd of the produce. Besides there was evidence that the trees were not that old, and, seems to have been planted by the present tenant and his fore-father in the land in dispute. On the basis of cumulative effect of all these circumstances the declaration of acquisition of occupancy rights was granted.

8. The aforecited authority in Rattan Singh's case is not applicable to the case in hand in as much as possession in the instant case is merely 30 years and there is no specific evidence either that at the time of the inception of the tenancy there was any agreement between the original land owners and the tenant that the latter would not be ejected from the tenancy at all, or, that such an intention can be gathered merely from the fact that Garibu as a tenant had installed tube-well in the land in dispute without producing any cogent and reliable evidence relating to the nature of tenancy at its very inception. Before taking electric connection for their tube-well the tenants naturally would have submitted application in writing to the competent authority. Normally the tenants would be expected to mention their interest in the suit land in which tube-well had been installed and electric connection was required. Since the electric connection was obtained by the tenants before any dispute arose between the parties concerning the nature of the tenancy, such documentary evidence would be material for determining the dispute about the exact nature of tenancy. No such evidence has been produced in the instant case. Besides, in the instant case, the annual rent was increased by the tenant on more than one occasion. Thus mere fact that the rent was nominal or that the tenants had installed a tube-well in the land in dispute, in our view, would not be sufficient to hold that Garibu or his predecessor or successors-in-interest had acquired rights as occupancy tenants therein. In view of the facts and circumstances referred to above in our view the authority in Rattan Singh's case (Supra) which is based on peculiar facts concerning very long possession of the tenants for over 70 years, is not at all applicable to the facts and circumstances of the present case. We are further of the view that the authority in Rattan Singh's case (Supra) would be applicable only to the limited extent, where tenants claim occupancy rights on the basis of very long possession coupled with other circumstances which would indicate that the intention of the landowner was not to eject the tenant for ever. We do not approve that the view expressed in Rattan Singh's case would be applicable to other cases like the one in hand where the tenancy is little more than 30 years and rent though nominal had been increased on more than one occasion. We, however, approve the view taken by Single Bench of this Court in Muni Lal's case (Supra) which is the consistent view followed by this Court.

9. The impugned orders passed by the revenue authorities that Garibu had acquired occupancy tenancy rights u/s 8 of the Act thus cannot be legally

sustained and the same are hereby set aside, and, the order passed by the Assistant Collector Ist Grade dated 24.3.1986 dismissing the suit filed by Garibu u/s 77(2) (d) of the Act is restored. This writ petition is accordingly allowed. However, there shall be no order as to costs.