

(1965) 08 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 127 of 1961

Hira Singh and Others

APPELLANT

Vs

Mst. Gauran and Others

RESPONDENT

Date of Decision : 30-08-1965

Acts Referred:

Penal Code, 1860 (IPC) — Section 447

Citation : (1966) 1 ILR (P&H) 622

Hon'ble Judges : Mehar Singh, J;Falshaw, J

Bench : Division Bench

Advocate : T.S. Mangat, for the Appellant; B.R. Aggarwal, for the Respondent

Judgement

Falshaw, C.J.—This is an appeal filed under clause 10 of the Letters Patent against the order of a Single Judge allowing a petition filed under Article 226 of the Constitution and setting aside an order of the Financial Commissioner and restoring that of an Assistant Collector.

2. The case of the original petitioner, a widow named Shrimati Gauran, who has since died, was that on consolidation re-partition proceedings she was placed in possession of two pieces (taks) of land, but the present appellants, who are apparently collaterals of her deceased husband had forcibly occupied these lands, as a result of which she prosecuted them u/s 447, Indian Penal Code. According to her allegations the criminal proceedings were compromised on the undertaking that the appellants would remain in possession of the land until June 1954 and would pay batai rent for the period of their occupation. In spite of this undertaking they neither vacated the land nor paid any rent and sometime in 1955 she instituted proceedings in the Court of an Assistant Collector for their ejectment on the ground of non-payment of rent.

3. In that suit the Assistant Collector passed a decree on the 7th of November, 1958 for the ejectment of the appellants, who were described as tenants, from a portion of the land in suit, it being held that they could not be ejected from a

portion of the land which was under the mortgage with them until the plaintiff redeemed the mortgage. This order was upheld in appeal by the Collector on the 16th of February 1959.

4. The appellants then went in revision to the Commissioner who was of the opinion that the appellants were entitled to the protection of section 7 of the Pepsu Tenancy & Agricultural Lands Act of 1955 as amended in 1956, and he accordingly forwarded the case to the Financial Commissioner with the recommendation that the decree be set aside and the case sent back to the Assistant Collector for decision in accordance with the provisions of section 7 of the Act. This recommendation was accepted by the Financial Commissioner after hearing the parties and his order was impugned in the present writ petition by Shrimati Gauran.

5. Since the latter had gone to the revenue Court and fought out the case up to the Court of the Financial Commissioner on the basis that the appellants were her tenants and were liable to ejectment for non-payment of rent, although they denied that they were her tenants and an issue on this point was framed by the trial Court and decided in the plaintiff's favour, and, moreover, in the writ petition this position was maintained by the petitioner, whose whole attack on the impugned order was based on the position that, the amended provisions of section 7 of the Act ought not to have been applied in a suit which was instituted before the amendment was introduced, it is rather surprising to find that the main basis of the decision of the learned Single Judge is a finding that the appellants were not tenants at all, but mere trespassers after June 1954 when they had undertaken to vacate the land, and that consequently the petitioner's suit ought to have been brought in the civil and not in the revenue Court and that this position could be regularised by the application of section 100 of the Tenancy Act. He also went on to hold that the amended provisions of section 7 could not be applied by the Financial Commissioner since the parties' rights crystallised in June 1954. The relevant provisions of section 7 of the Pepsu Act read-

No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds, namely:

(a)

(b)

that the tenant has failed to pay rent within a period of six months after it falls due.

The amendment, which came into force in May 1953, is in the form of a proviso which reads-

Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejectment and he has

failed to pay such arrears during that period.

6. Although on the facts of the case one may feel some sympathy for the widow whose husband's collaterals have been found to have acted in a high-handed manner this sympathy cannot possibly be made a ground for deciding a writ petition on a plea which was never made in the petition itself, and indeed is directly contrary to the position adopted throughout by the petitioner in the litigation which led to the passing of the impugned order, and in my opinion the writ petition must be decided on the basis that the appellants were in fact the tenants of the petitioner. Thus the only proper question for decision by this Court is whether the appellants were entitled to the benefit of the proviso which had come into force two and a half years before the suit was decided by the Assistant Collector. On a plain reading of the proviso I have no hesitation in holding that it was applicable in the present case. The position might possibly have been different if the suit had been decided by the Assistant Collector before the amendment came into force, but it is not necessary to decide in the present case whether in such a case the proviso could have been applied at the stage of appeal or revision. As far as I can see after the date on which the proviso came into force no tenant could be ejected in proceedings based on non-payment of rent unless and until the amount due on account of rent had been determined by the Court and the tenant had been allowed six months from the date of such determination to pay the arrears, and the proviso was certainly applicable to pending cases.

7. In holding to the contrary the learned Single Judge has relied on the decision in *Moti Ram Vs. Suraj Bhan and Others*, , but in my opinion that decision is not applicable. The facts in that case are that an ejectment application was filed under, section 13 of the East Punjab Urban Rent Restriction Act on the 28th of August, 1956, one of the grounds being based on the provisions of section 13 (3) (a) (iii) which were to the effect that the landlord may apply to the Controller for an order directing the tenant to put the landlord in possession in the case of any building "if he requires it for the reconstruction of that building or for its replacement by another building or for the erection of other building. This was amended soon after the institution of the proceedings, the following being substituted:

In the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or Local Authority or any Improvement Trust under some improvement or development scheme or it has become unsafe or unfit for human habitation.

The Rent Controller and the Appellate Authority decided on all the points in the case against the landlord, but in revision the High Court upheld the ground of eviction based on the provisions of section 13 (3) (iii). The question then arose in the Supreme Court whether, after the amendment of this sub-section, the landlord's case, not being covered by any of the grounds therein, the tenant's ejectment could be ordered on the landlord's plea based on the original

provisions of the sub-section, and it was held that it is well-settled that where an amendment affects vested rights the amendment would operate prospectively unless it is expressly made retrospective or its retrospective operation follows as a matter of necessary implication and the amending Act obviously does not make the provisions in section 13(l)(a)(iii) retrospective in terms and the retrospective operation of the relevant provision cannot be spelt out as a matter of necessary implication. Obviously if a landlord institutes ejectment proceedings on a ground which existed in the Act at the time of his suit, but is later deleted as a result of an amendment, his right to pursue the suit cannot be taken away unless the amending Act makes this intention perfectly plain. This is something different from the conferment by an amending Act on a tenant of a right not to be ejected on the ground of non-payment of rent unless, when the extent of the arrears has been determined, he has been given an opportunity to pay the arrears within six months. The landlord's vested right to eject the tenant for nonpayment of rent remains intact and all that the Act does is to give the tenant who is in arrears a locus penitentiae to remedy his omission, and in my opinion such a provision cannot be regarded as retrospective if it is applied to cases pending on the date of the introduction of the amendment. Indeed in my opinion if pending cases were to be excluded from the scope of the amendment it would be necessary to make this intention plain. The result is that I would accept the appeal and dismiss the writ petition and I would restore the order of the Financial Commissioner for the case to be remanded to the Court of the Assistant Collector to be decided in accordance with law. It would be befitting in my opinion if the parties are left to bear their own costs throughout.

Mehar Singh, J.

8. I agree.