
(2014) 05 P&H CK 0686

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 464 of 1992 (O&M)

Jaidev Singh

APPELLANT

Vs

Financial Commissioner

RESPONDENT

Date of Decision : 29-05-2014

Acts Referred:

Punjab Land Reforms Act, 1972 — Section 4

Punjab Security of Land Tenures Act, 1953 — Section 10-A, 10-A(b), 10-B, 18, 4

Citation : (2014) 4 RCR(Civil) 158

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : I.K. Mehta, Senior Advocate and Ranjit Mehta, Advocate for the Appellant; P.S. Bajwa, DAG, Reeta Kohli, Senior Advocate and Rajesh Tushar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition challenges the order passed by the authorities under the Punjab Security of Land Tenures Act, 1953 (for short, Rs. " 1953 Act") rejecting a plea by the petitioners who claimed to be the heirs of Nahar Singh to eject the tenant in possession on a contention that he had no right to secure proprietary rights u/s 18 of the 1953 Act. Some more facts are necessary to understand the points canvassed by the learned senior counsel appearing on behalf of the petitioners. The properties were declared as surplus in the year 1960 and the property was allotted to the respondent as a tenant. The original landlord complained that there had been default in payment of rent by the tenant and applied for ejectment for non-payment u/s 9 of the Act. The landlord himself had died on 15.04.1970 and the tenant applied u/s 18 on 10.09.1971 to purchase the property. The recognition of the right granted under the statute.

2. The landlord had two contentions to make: (i) the property was not utilized so long as the right u/s 18 was not completed, transferring the proprietary rights to the tenant; (ii) if there had been no full utilization, the death of the landlord

would operate to create succession of right to the legal heirs and the legal heirs would be entitled to redetermination of the holding in their hands. In such an eventuality, the allotment already made would stand reverted to the legal heirs if the holding in the hands of the legal heirs cannot exceed the surplus.

3. The learned senior counsel appearing on behalf of the petitioners would refer to the decision of the Supreme Court in *Financial Commissioner, Haryana State and Others Vs. Kela Devi and Another*, that examined the expression "utilization" occurring u/s 4 of the Act. The Supreme Court held that mere allotment of the property was only the initial stage in the process of utilization of surplus area and did not complete that process. For completion of process, there was a necessity for an allottee to (i) obtain a certificate of allotment; (ii) take possession of the land within period specified; (iii) execute qabuliat or patta in respect of land. If only the utilization was complete and when the possession of surplus area had been taken by an allottee and other formalities were completed, the tenant would obtain a full proprietary right and if not, such a right was always defeasible, if other conditions prescribed by law had not been fulfilled. The Supreme Court was examining it in the context of the further consequence of the death of landowner and the survival of interest to heirs by inheritance. Any such succession operating to the heirs, the Supreme Court held inheritance affected utilization of surplus area if order made for utilization was not fully implemented.

4. Ms. Reeta Kohli, Senior Advocate, was appointed as *Amicus Curiae* to assist the court in view of the fact that the tenant who contested the application before the authorities below is not represented before this court and I was of the view that the case bristled over certain legal issues that required proper assistance. The learned senior counsel's response to the arguments by pointing out that, of the three formalities which the Supreme Court has outlined, the event of obtaining a certificate of an allotment was complete; taking of possession was also admittedly complete, for, the petition itself for ejectment was on the admitted premise of possession of the tenant. The execution of qabuliat is a manner of determination of a person as a tenant vis-à-vis a landlord and such execution itself is only to assess the status of a person as a tenant and was only a procedural formality. The Supreme Court judgment must be understood that the three incidents that it outlined cannot be taken as not satisfied so long as the respondent treated himself as tenant and was applying for proprietary rights u/s 18 only under such status. The utilization, according to the learned counsel, would take into account the whole process of identifying the surplus area for the landlord and putting to use the land in the hands of another person such as a tenant. The counsel in that context refers me to a ruling in *Kamla Devi Vs. Financial Commissioner (Appeals) and Others*, when the Division Bench of this court was actually examining the concept of utilization. The Division Bench explained that a landlord may recover rent but could not seek ejectment of such a tenant. The vesting of land after taking possession by utilization applied to surplus area and not to tenant's permissible area. Dealing with the issue of the effect of succession after the property fell to the hands of the tenant and stood

utilized, the Bench held, "the right of purchase stands crystallized upon declaration of surplus area and any subsequent act by a big landowner of transferring this land or his demise before the application for purchase is allowed, does not adversely affect the right of a tenant."

(emphasis supplied)

The Bench proceeded to hold that the property which was utilized under the 1953 Act could not be taken as divested from the hands of the tenant in favour of the landlord except that the landlord would have his right to receive compensation and rent. The Division Bench was, therefore, holding that any transfer or death would not operate any divest of tenant's right and revest the property in the hands of the legal heirs.

5. The counsel would also refer me the other Division Bench ruling of this court to drive home the point that if a tenant occupied the land and the land was not in his possession, it should be taken that the property stood utilized. In *Hari Chand and Others Vs. The Financial Commissioner and Others*, dealing with Section 4 of the Punjab Land Reforms Act, 1972 and the effect of succession, the court held the land which is declared surplus either under Punjab Law or Pepsu Law and which had not been utilized and continued to be in possession would have been re-computed after the Act but once a tenant had occupied the land and the landlord was not in possession, it must be taken that it stood utilized and it was to be declared to be tenant's permissible area. The tenant's right to purchase under the Act would commence within one year from the date of 1972 Act and if his application was already pending, it made no difference and would amount to even a valid application under the new Act. In *Antu Vs. Naresh Saran* the Division Bench adverted to Section 10-B regarding utilization of surplus area in the context of the tenants' permissible area and the allotment to resettle the tenants. When it observed that the tenant who was already in possession of the surplus area, it must be taken that the surplus stood fully utilized. The issue of what utilization therefore obtains and the effect of succession were also considered slightly in a different context by a Full Bench of this court in *Sardara Singh and others v. The Financial Commissioner and others*, 2008 (2) R.C.R. (Civil) 744 : 2008 (3) PLR 297 that held that until the surplus area had been finally determined, the death of a landlord would certainly cause affectation of interest of landowner's holding, but if there had been utilization of the property and the determination had become final, succession would not make the difference. The attempt of the learned senior counsel was to show that the finality obtained when the property was treated as surplus and delivered to a tenant after a grant.

6. I must point out that in *Kela Devi* (supra), the Supreme Court was considering a situation of a mere order of allotment that had been issued that was not accompanied with the actual utilization by the person in whose favour the grant had been made. Here, in this case, we have an admitted premise that the property had passed to the hands of the tenant the 4th respondent and he held

the property as such.

7. The residual question that would still require to be seen is whether Section 10-A(b) would come under the way of allowing for legal heirs to contend that they are small landowners and entitled to ejectment for non-payment of rent. The whole scheme as provided u/s 10-A with clauses (a) to (c) would show that the provision was to consider the manner of resettlement of a tenant who is ejected or liable for ejectment under the provisions of Section 9. Clause (b) only emphasis on what is otherwise evident that any transfer or disposition of land which is comprised in the surplus area or at the commencement of the Act shall have no effect unless in situations where the land was acquired by the State Government or where the property stood transmit to heirs by inheritance. A petition filed by landlord for ejectment in the year 1970 for nonpayment of rent was resisted through an application filed on 10.09.1971 to purchase the property u/s 18. It is not in doubt that the purchase application was within time. The argument placed that till the property is purchased notwithstanding the utilization of the property by the tenant, the death of landowner will result in disabling tenant to exercise the right governed u/s 18 whittles the scheme of the legislation to empower a tenant who holds possession under a right for certain number of years as the Section contemplates. A survival of interest could happen to the legal heirs to defeat the tenant's claim only if the property itself had not been utilized or when the surplus area proceedings had not come to an end. It will be wrong to assume that the surplus area proceedings were to be kept in a state of suspension till the tenant exercises the right to purchase u/s 18. The purchase is merely an additional right which the Act provides. The landlord was never allowed the right to resume possession even after the property was declared as surplus and till the property was ultimately transferred in favour of the tenant to collect the rent. The right to collect rent of the landlord would survive to the legal heirs and the right to the property cannot be secured back from the tenant. The argument canvassed by the learned senior counsel annihilates the common understanding of survival of interest to immovable property. The right of landlord and tenant survive to the respective legal heirs except in very special position that debar survival of such entries. Enactments providing for privileges to certain classes of landlords and tenants such as for instance, NRI or specified landlords of certain manner of use alone may dictate different situations, so that a legal heir who does not obtain to a similar status as the original landlord or the tenant will not have a right to continue as such. In every other situation, the jural relationship of landlord and tenant would continue beyond the lifetime of the respective status as landlord and tenant and survive to the legal heirs as well.

8. The learned senior counsel appearing on behalf of the petitioners would also refer to the decision of the Supreme Court in Kanava Ram and others Verstis Rajinder Kumar and others, 1985 PLJ 167. The Supreme Court was considering the effect of Section 18 of the 1953 Act where devolution of interest by inheritance or survivorship was held to be relevant for determining rights of

tenant u/s 18. The Supreme Court was considering the case of pendency of proceedings brought at the instance of a big landowner in a situation where the property that had been declared as surplus and granted to a tenant had to be simultaneously dealt with. The death of landowner, the court held, would operate to create survival of interest to the legal heirs that could defeat a tenant's expectation to purchase. In that case, the facts showed that the proceedings were pending before the Financial Commissioner as regards the determination of surplus area itself. We have brought out the factual situation in this case that as regards the determination of surplus, the party's right had fructified and a finality had obtained which would make all the difference to the consideration of the issue at hand. What was in a state of flux for a tenant who had but an expectation to purchase when the surplus area proceedings were still at large cannot be invoked in this case where after 1960 when the property was declared as surplus and granted to the tenant by the State in 1964, nothing further remained as regards the determination of ceiling area. I will not, therefore, find any reason to apply the principles brought out in the decision in *Kanava Ram* (supra).

9. There is no case made for an intervention in favour of the landlord and secure to the petitioners any benefit and to defeat the right of the tenant to purchase. As a matter of fact, it is brought out by the State counsel that execution sale had already been made in favour of the tenant some time in the year 1975-76 and the property has gone to the other hands as well.

10. Before I conclude, I place my sincere appreciation to the learned senior counsel Ms. Reeta Kohli for the assistance rendered as *Amicus Curiae*. The writ petition is dismissed on the above terms.