
(1963) 10 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 715 of 1963

Lachhmi Narain and Others	Vs	APPELLANT
The Financial Commissioner and Others		RESPONDENT

Date of Decision : 01-10-1963

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 10A, 18, 18(1), 19A, 19C

Citation : (1964) 1 ILR (P&H) 607

Hon'ble Judges : S.S. Dulat, J; Prem Chand Pandit, J

Bench : Division Bench

Advocate : N.L. Dhingra, for the Appellant; M.R. sharma, H.L. Sarin, K.K. Cuccria and S.M. Sikri, General, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Pandit, J.—This order will dispose of three writ petitions (Civil Writs Nos. 715, 716 and 1138 of 1963), which arise out of the same order, dated 24th April, 1963, passed by the learned Financial Commissioner, Revenue, Punjab. Dharam Paul and others, who are the tenants, applied to the Assistant Collector, 1st Grade, Fazilka, u/s 18 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act), for the purchase of the land in dispute. The landlords raised the following two preliminary objections:

(1) Under the provisions of Section 18(1) of the Act, only such a tenant was competent to file an application for the purchase of the land under his tenancy, who had completed a continuous period of six years prior to the commencement of the Act.

(2) Under the provisions of Section 19-A of the Act, a tenant who either owned or held area beyond the permissible limit was not competent to purchase his tenancy until he divested himself of the area beyond the permissible limit.

2. As regards objection No. 1, the same was overruled by the Assistant Collector, holding that though the wording of this section strictly construed might lead to

the interpretation put by the landlords, yet, according to the practice of their Department, these applications were being entertained irrespective of the fact whether the tenants had completed a continuous period of six years at the time of the commencement of the Act. With regard to objection No. 2, it was held that the tenants could not hold more than the permissible area, but they could not give up any area till their applications u/s 18 of the Act were decided in their favour. They could, however, be called upon to file an affidavit to the effect that they would give up the excess area in the event of their applications being accepted. He, therefore, directed the tenants to file such affidavits.

3. When the matter went in appeal to the Collector, he held that under the provisions of Section 18, the period of six years must be completed by the tenants at the time of the commencement of the Act. With regard to the second objection, his decision was that the status of the tenants had to be seen on the date when they made applications u/s 18 and if they were in possession of more than the permissible area on that date, they were not entitled to make such applications. As a result, the appeal of the landlords was accepted and it was held that the tenants were not entitled to purchase the land in dispute.

4. This order of the Collector was affirmed by the Additional Commissioner.

5. Thereafter, the tenants went in revision to the learned Financial Commissioner. He held that the right of purchase u/s 18(1)(i) of the Act could only be exercised by the tenants whose tenancies existed on 15-4-1953, that is, the date of its commencement, and that the tenants should have been in continuous occupation of the lands comprised in their tenancies for a minimum period of six years on the date of the application for the purchase of the land and that land had not been included in the reserved area of the landowner. He further held that the tenants who, on the date of the applications, owned or held land exceeding the permissible area, would not be entitled to purchase the same under their tenancies. As a result of these findings, the revision petitions were partly accepted, the orders of the Collector and the Additional Commissioner were set aside and the cases were remanded to the Assistant Collector, First Grade, for a fresh decision in view of his findings given above.

6. Against this decision, three writ petitions were filed in this Court, two by the landlords, namely, Civil Writ No. 715 of 1963 (Lachhmi Narain and Ors. v. The Financial Commissioner, Punjab and Ors.) and Civil Writ No. 716 of 1963 (Bahadur Ram and Ors. v. Financial Commissioner, Punjab and Ors.), and one by the tenant, this is Civil Writ No. 1138 of 1963 (Budh Ram v. Financial Commissioner, Punjab and Ors.).

7. Learned Counsel for the landlords submitted that the finding of the learned Financial Commissioner to the effect that the tenants must have been in continuous occupation of the land comprised in their tenancies for a period of six years on the date of the application for the purchase of land was incorrect. The learned Additional Commissioner and the Collector were right in holding that this

continuous possession of the tenants for six years must be on the date of the commencement of the Act. (Since it had been found that the tenants had failed to establish that they were in such possession on the date of the enforcement of the Act, their applications u/s 18 of the Act were rightly dismissed by the Collector and the learned Financial Commissioner should not have remanded the same for a fresh decision. Learned Counsel further submitted that if the interpretation put by the learned Financial Commissioner on the provisions of Section 18 was to be accepted, then it would defeat the very purpose for which the Act was enforced. He referred to the various provisions of the Act, as for example, Sections 2(5-a), 9(1)(i), 9-A, 10-A, 18, 19-C and 19-F of the Act and argued that these provisions clearly indicated that the surplus area declared at the time of the commencement of the Act, could only be utilised by the Government for the resettlement of the tenants ejected under the provisions of Section 9(1)(i) of the Act and further that Section 10-A(b) also stated that the utilization of any surplus area would not affect the rights of the landowner to receive rent from the tenants so settled. According to the learned Counsel, only those tenants could purchase the land under the provisions of Section 18 of the Act, who were in continuous possession of the land for a period of six years at the time of the commencement of the Act, because after this date, the land, beyond the permissible limit, was declared surplus area and the landowners could not be deprived of the rent from the tenants, who were settled by the Government on the same.

8. The relevant portion of Section 18 of the Act is in the following terms:

Section 18(1). Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a landowner other than a small landowner-

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or

(ii) who has been restored to his tenancy under the provisions of this Act and whose period of continuous occupation of the land comprised in his tenancy immediately before ejectment and immediately after restoration of his tenancy together amounts to six years or more, or

(iii) who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of this Act, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejectment, shall be entitled to purchase from the land owner the land so held by him but not included in the reserved area of the land owner, in the case of a tenant falling within clause (i) or Clause (ii) at any time, and in the case of a tenant falling within clause (iii) within a period of one year from the date of commencement of this Act.

9. A plain reading of this section would show that the tenants who are governed by Clauses (i) and (ii) shall be entitled to purchase from the landowner the land so held by him, but not included in his" reserved area, at any time, while the

tenants included in Clause (iii) can exercise this right within a period of one year from the date of the commencement of the Act. It is, therefore, clear that the Legislature did not put any restriction in the way of the tenants falling under Clauses (i) and (ii) for making applications for the purchase of the land under their tenancies. It, therefore, follows that in the case of the tenants falling under Clause (i), all that was necessary for them to show was that they were in continuous occupation of the land comprised in their tenancies for a minimum period of six years. This is obviously on the date when they were making an application for the purchase of land u/s 18. The section does not say that they should be in continuous possession for six years at the time of the commencement of the Act. We will have to introduce the words "at the commencement of the Act" after the words "for a minimum period of six years" occurring in Clause (i) mentioned above, if we accept the interpretation put on this section by the learned Counsel for the landlords. In my view, the language of the statute is clear and is capable only of one meaning, namely, that tenants must be in continuous occupation of the land under their tenancies for a period of six years on the date of the making of the application under this section. It is, therefore, not necessary to introduce the words, which the learned Counsel for the landlords wishes us to do.

10. So far as the other argument of the learned Counsel for the landlords regarding the utilisation of the surplus area under the provisions of Section 10-A(b) of the Act is concerned, in my view any area declared surplus at the time of the commencement of the Act would remain so, even if it was purchased by anybody, including the tenants under the provisions of Section 18 of the Act, after the enforcement of the Act. The result would be that the transferee would be bound to accommodate the ejected tenants, whom Government may wish to resettle u/s 10-(A)(a) of the Act and this obligation will not be altered by the fact that the vendee or transferee is himself a small landowner. In other words, such a transferee would be a limited owner subject to the obligations mentioned above. Therefore, the argument of the learned Counsel for the landlords that this surplus area could not be purchased by these tenants after the commencement of the Act under the provisions of Section 18 does not hold good.

11. From the above, it is clear that the finding given by the learned Financial Commissioner that the tenant must prove his continuous occupation of the land comprised in his tenancy for a minimum period of six years on the date of the application for the purchase of the land u/s 18 of the Act is correct.

12. The writ petitions filed by the landlords (Civil Writs Nos. 715 and 716 of 1963) are, therefore, dismissed. In the circumstances of this case, however, the parties are left to bear their own costs in these proceedings.

13. Learned Counsel for the tenants submitted that the findings given by the learned Financial Commissioner that the right of purchase u/s 18(1) (i) of the Act could only be exercised by the tenant whose tenancy existed on the date of the commencement of the Act, that is, 15th April, 1953, and that a tenant, who on

the date of the application owned or held land exceeding the permissible area, would not be entitled to purchase the land under his tenancy were incorrect.

14. We are, however, not prepared to pronounce any opinion on these two matters at this stage. The tenants are not objecting to the order of the remand made by the learned Financial Commissioner. The cases have to go back to the Assistant Collector, First Grade, who has, in the first instance, to decide the questions of fact, namely, whether these tenants were in occupation of the land in dispute as tenants on 15th April, 1953 or not and, secondly, whether they owned or held any land exceeding the permissible area on the date of the applications made by them u/s 18 of the Act. After these questions are determined, these cases will then be finally decided. If the decision goes against them, they will naturally move the higher authorities prescribed under the Act and after exhausting all the remedies they can approach this Court, if so advised. At the present moment, all that can be said is that there is an expression of opinion on a point of law by the learned Financial Commissioner. Even if this opinion be against the tenants, this Court in writ proceedings is not going to pronounce judgment on abstract propositions of law. When a concrete case will come up for decision and it is found that the same has been decided contrary to law, then this Court will interfere. With these observations, the writ petition (Civil Writ No. 1138 of 1963) is also dismissed with no order as to costs.

S.S. Dulat, J.

15. I agree.