

(2009) 04 P&H CK 0289
In the Punjab And Haryana At Chandigarh

Major Dalip Singh (Retd.)	Vs	APPELLANT
The State of Punjab and Another		RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 9, 9A(i)

Citation : (2010) 158 PLR 93

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—This order will dispose of four Civil Writ Petition Nos. 450 of 1985 (Major Dalip Singh v. The State of Punjab and Anr.) 641 of 1985 (Major Dalip Singh v. The State of Punjab and Anr.), 642 of 1985 (Major Dalip Singh v. The State of Punjab and Anr.) and 643 of 1985 (Major Dalip Singh v. The State of Punjab and Anr.). The facts are being taken from Civil Writ Petition No. 450 of 1985.

2. Respondent No. 2 Avtar Singh was a tenant under the petitioner. On 9.2.1982, the petitioner filed an application seeking ejectment of respondent No. 2 from the area reserved on Form K-2 under the provisions of Section 9 of the Punjab Security of Land Tenures Act (for short "Tenure Act"). On 3.6.1983, Assistant Collector 1st Grade accepted the application and passed an order of ejectment of respondent No. 2 from the reserved area of the petitioner. Assistant Collector viewed that amendment in the Punjab Security of Land Tenures Act in 1969 that the tenant shall not be liable to be evicted from a minimum of 5 standard acres until he was allotted alternative land should not apply to the petitioner being member of Armed Forces. The petitioner dispossessed respondent No. 2 on the basis of this order. Respondent No. 2 filed an appeal against the same before Collector, which was dismissed on 26.9.1983, but with a rider that respondent No. 2 shall be ejected from the reserved area only after his re-settlement on the alternative land equivalent to 5 standard acres, as provided in the proviso to the Section. This was so held finding that the petitioner had already retired from the

service of the Army and as such was not entitled to protection available u/s 9-A(i) of the Tenure Act. Aggrieved against the same, the petitioner filed an appeal before Commissioner, Jullundur Division, Jullundur which was dismissed on 2.5.1984. Financial Commissioner also dismissed the revision filed by the petitioner on 31.12.1984. The petitioner has, thus, challenged the orders dated 31.12.1984, 2.5.1984 and 26.9.1983 passed by Financial Commissioner, Commissioner and Collector, Amritsar, respectively. The petitioner, claiming to be a member of the Armed Forces, pleads that he would be entitled to the benefit of the provisions to Section 9-A(i) of the Section, which provides that tenant of a landowner, who is a member of the Armed Forces of the Union, shall not be entitled to the benefit of this Section. The Section grants benefit to a tenant of a small landowner to retain possession of his tenancy to the extent of 5 acres until he is accommodated on a surplus area otherwise. The petitioner pleads that he would be exempted from the operation of this stipulation being member of the Armed Forces.

3. In the reply filed, number of preliminary objections have been raised and it is pleaded that the writ petition is not competent and is liable to be dismissed as necessary parties have not been impleaded. Allegations of mis-statement of facts and for stating wrong facts are also made. On merits, it is stated that Lajja Singh great-grand father of the answering respondent used to cultivate the land as a tenant under Raja Hira Singh. After death of Lajja Singh, his son Khushal Singh, grand-father of answering respondent became the tenant under Raja Karam Singh, the adopted son of Raja Hira Singh. After the death of Khushal Singh, his sons Surain Singh (father of the answering respondent) and Narain Singh became tenants under Raja Karam Singh, the grand father of the petitioner and after death of Surain Singh, the answering respondent has become tenant on the land. It is further brought out that the petitioner became owner of the land in the year 1952, wheregs tenancy of the respondent is for more than hundred years. It is on this basis pleaded that the petitioner was not entitled to include the land in question in his reserved area and was to be left out as tenant's permissible area. Grievance is made that the petitioner has managed to get approval of the Collector regarding reservation of the land in question as his permissible area which is not legally permissible. Order passed by the Assistant Collector is termed patently illegal, being against the expressed provisions of the third proviso to 9-A of the Tenure Act. It is stated that Assistant Collector had wrongly presumed the petitioner to be still a member of the Armed Forces of the Union, whereas he had already retired w.e.f. 31.12.1976. Copy of this retirement order is annexed with the reply as Annexure R-1. It is, thus, claimed that petitioner was not the member of the Armed Forces of the Union on 9.2.1982, when the case of ejectment of the respondent was finalised. Respondent No. 2 would also plead that the petitioner, being very rich and resourceful person, has managed to dispossess him and has obtained possession within ten days of the order dated 13.6.1983. In his reply, respondent No. 2 would justify the order passed by the Collector, who has held that his ejectment would take place only after re-

settlement on alternative land as provided under the Act. The petitioner was not held entitled to the relevant proviso u/s 9 of the Tenure Act.

4. Counsel appearing for the petitioner has made two-fold submission to challenge the impugned order. The counsel would first submit that the petitioner was rightly given benefit of the proviso u/s 9-A of the Tenure Act, which has been wrongly declined by Collector, Commissioner and Financial Commissioner. The proviso, which is in issue, is to the effect that if the tenant concerned is the tenant of a small landowner, he shall be allowed to retain possession of his tenancy to the extent of 5 standard acres including any other land which he may hold as tenant or owner until he is so accommodated on surplus area or otherwise. In 1969 as an amendment, it was added that tenant of landowner, who is a member of Armed Forces of the Union, shall not be entitled to the benefit of this Section. Invoking this proviso, the petitioner has sought the ejectment of respondent No. 2 by pleading that he was a member of the Armed Forces of the Union and as such respondent-tenant would not be entitled to the benefit of retaining possession of his tenancy to the extent of 5 standard acres as laid down u/s 9-A of the Tenure Act. As per the counsel, the question for determination are the words "members of the Armed Forces". Assistant Collector 1st Grade has ordered the ejectment of respondent No. 2 by giving benefit of the proviso treating him to be a member of the Armed Forces. Respondent No. 2 challenged this order on the ground that petitioner was not member of the Armed Forces as having voluntarily left the service and, thus, the benefit of the amended provision has been wrongly extended to him.

5. It was rightly noticed by the Collector that he was only required to see if the tenant should be ejected or not with or without settlement. Decision on this question depended upon the status of the petitioner being a member of the Armed Forces. Collector held that petitioner was not a member of the Armed Forces because he had retired from the Army in 1976. Collector, thus, accepted the appeal and ordered that respondent No. 2 shall be ejected from the reserved area only after his re-settlement on the alternative land equivalent to 5 standard acres. This view taken by the Collector was up-held by Commissioner (Appeals) before whom the petitioner raised number of pleas more in desperation rather than being on any legal basis. It was pleaded that the meaning given to the proviso that it should apply for ejectment before his retirement does not serve any purpose because while in service the landlord does not need land for his personal use. It was further pleaded that the retirement of the petitioner from the Armed Forces did not relieve him of his responsibility as he was transferred to Regular Reserve of officers with effect from the date of his retirement and was liable to be recalled upto 30.1.1982. The plea further was that the officer in the reserved list would remain subject to the same discipline and conditions of service as regular officer. It was also pleaded that age of retirement of Majors had been increased from 48 to 50 years and the petitioner could have continued in service upto 1978 and so should be presumed to be in the reserved list upto 1984. On similar lines, the submissions were made by the learned Counsel

before this Court. The counsel accordingly pleads that petitioner was member of the Armed Forces and, thus, was entitled to the benefit of the proviso.

6. Second ground of attack is that respondent No. 2 had been allotted 23 kanals 17 marlas land in village Panjwar and, thus, the rider in the order regarding the re-settlement stood complied with. As per the counsel, this allotment was still standing in the name of the respondent. In this regard, further reference is made where the Collector had waited for the respondent No. 2 to come forward and take possession. As per the counsel, the respondent was served notice and the warrant of possession was also issued, but the respondent deliberately did not appear to take possession. By referring to these facts, it is pleaded that the process of delivery of possession was duly complied with, but respondent No. 2 willfully failed to take possession of the allotted land.

7. The counsel for the respondent No. 2 would rebut this and says that proceedings regarding allotment were carried out in a clandestine manner with great haste and without information and knowledge to the respondent. He would further plead that no genuine efforts were made to deliver the possession of the surplus area and all these proceedings described in the writ petition were mere paper entries. The respondent would refer to the application dated 31.1.1984 filed before the Collector alleging that no notice had come to him requiring him to take possession of any allotted surplus area of which he had refused to take possession. Rather the respondent had pleaded that the possession of surplus area be delivered to him. It is also disclosed that when the answering respondent went to take possession of the land on 15.2.1984, a copy of the stay order dated 9.2.19084 was produced by Mula Singh and Ors., who were the occupants of the land and hence the possession of the surplus area could not be delivered to the answering respondent.

8. Taking up the submissions made by the petitioner, let us see if the petitioner could be held to be member of the Armed Forces to get benefit of the proviso as pleaded by him. The term "members of the Armed Forces of the Union" in the proviso though not defined but appears to have been used in a literal sense. Even as per us petitioner, to decide the same, one would have to look to the provisions of Army Act and Rules. Can a retired or a discharged soldier, who is getting a pension, may be subject to re-call during emergency, be called as a member of the Armed Forces of the Union?. The petitioner has made reference to the definition of Regular Army as defined in Sub-section (xxi) of Section 3 which means officers, junior commissioned officers, warrant officers, noncommissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term military service to the Union in any part of the world, including persons belonging to the Reserved Forces and the Territorial army when called out on permanent service. The submission by the counsel for the petitioner that since the petitioner was kept in the regular reserved and was liable to be re-called and as such would be member of the Armed Forces, is nothing but misreading of the definition of the

term "Regular Army". Person belonging to the Reserve Forces and Territorial Army would become part of a regular army and may, thus, be a member of the Armed Forces when they are called out on permanent service. The petitioner was not called out for any permanent service and as such cannot be taken as a member of the regular army and thereby become member of the Armed forces. Mere liability to be called upto certain period would not make the petitioner to be a member of regular army. This can further be seen from the definition of term "Officer" as defined u/s 3(xviii). Officer is a person commissioned, gazetted or in pay as an officer in the regular Army, The petitioner certainly was not gazetted or in pay as an officer of the regular army. In fact, the status of the petitioner being member of the Armed Forces would be regulated by the provisions of Section 2 of the Army Act, 1950, which provides that the persons mentioned therein would be subject to the Act wherever they may be, namely, the officers, junior commissioned officers, and warrant officers of the regular army. In fact, as per Section 2(2) every person subject to the Act is to remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service. The subjection of a person would cease from the date of retirement, discharge, release, removal or dismissal from service or cashiering. In this background, it would be difficult to accept the contention of the counsel for the petitioner that though retired, the petitioner would continue to be the member of the Armed Forces.

9. The petitioner has also made reference to the statements of object and reasons for enacting this proviso and as is published in Gazette Notification on 30.10.1969. It is noticed that the Punjab Security of Land Tenures Act and Pepsu Tenancy and Agricultural Lands Act did not contain any provision for safeguarding the interest of the Armed Forces. The Ministry of Defence had stressed the desirability of safeguarding the interests of the defence personnel so that tenancy legislation should not place them under any handicap as compared to those who are able to reside in the village and cultivate their land. It is in this background, the amendment was made to provide that the restriction for ejectment of a tenant until he is allotted an alternative land should not apply to the case of land leased by members of the Armed forces. Such members of the Armed Forces who leased out their land after commencement of the Act should have a right to resume the land upto a permissible limit. The purpose behind this amendment seems to be that a member of the Armed Forces by virtue of his service would not be able to do the self cultivation of the land and may have to lease the same while being in service. Once he has retired, then the necessity of this benefit would go as he would be in a position to self cultivate the land. That is why the benefit of this provision has been extended to a person who is member of the Armed Forces. The words reading "tenancy legislation should not place them under any handicap as compared to those who are able to reside in the village and cultivate their land" are giving out the purpose. Thus, a retired serviceman, who is able to reside in village would not need protection. This is meant for person in service as he would not be able to do self cultivation. If the

intention of the legislation was to provide this benefit to the retired members of the Armed Forces, the provision could have easily been made to this effect. If this provision is allowed to operate in a manner as pleaded by the counsel for the petitioner, it would amount to adding words to the effect that tenant of a land owner, who is a member of the Armed Forces or has been member of the Armed Forces, shall not be entitled to the benefit of this Section. The provision of proviso being clearly worded, there is no ambiguity which would require reading down of the said provision. The intention of the legislation is to be inferred from the word used and in the manner these are used and it is not appropriate to add or subtract anything from the proviso. The provision cannot be read in a manner to add words as already observed and accordingly the contention raised by the counsel for the petitioner in this regard deserves to be rejected being without any substance.

10. Coming to the second plea raised by the petitioner, it would deserve notice at the outset that different benches of this Court made more than required efforts to see in case the respondent could be adjusted on some alternative land if available so as to allow the petitioner to retain possession of the land despite the order standing against him. After number of adjournments, it was stated before the court that no alternative land is available to adjust the respondent. The counsel for the petitioner made laborious efforts to urge that respondent had intentionally not taken possession of the alternative land and on account thereof, it should be assumed that he had been adjusted on the land offered as alternative and so should not be shown any further consideration. The submission by the counsel for the respondent that the petitioner is rich and influential person and had managed to dispossess the respondent within ten days of the orders cannot be easily ignored. It is not without reason that the respondent had even gone to the spot for taking possession of the surplus land allotted to him when he was confronted with stay order dated 9.2.1984. He, thus, could not take possession of the land allotted to him. In this background, it would not be possible to accept the contention of the petitioner that respondent has purposely not taken possession of the alternative land allotted to him. Why would he not take possession of an alternative land allotted to him. Once he had been dispossessed by the petitioner, he would rather be keen for adjustment on some alternative land if allotted to him. The respondent can be expected to be realistic that his ejection has been ordered with a rider that he was to be re-settled on the land equivalent to 5 standard acres. It has even been observed by the Financial Commissioner in the impugned order that the allotment of alternative land has not been done properly and directions were issued to the revenue officers to proceed with the matter properly after going on the spot. The Financial Commissioner has accordingly rejected the submission made before him that respondent had refused to accept the alternative land allotted to him and he rather observed that on analysis and examination, it was clear that the respondent-tenant had not willfully failed or neglected to take possession of the alternative land sought to be allotted to him. This contention of the petitioner

was accordingly rejected.

11. It would not be appropriate for this Court while exercising writ jurisdiction to go into the disputed questions of fact whether the respondent had failed to take possession of the alternative land allotted to him or not. The word used in the Section are "unless he is so accommodated". The issue before this Court, thus, would not be whether the respondent had willfully declined to accept the alternative land offered, but to see if respondent No. 2 has been accommodated or not. That alone would lead to complying with the order passed. Concededly, respondent No. 2 has not so far been accommodated on any alternative land and, thus, the conditional order of ejectment has not been complied with. It is in this background that efforts were made to seek adjustment of respondent No. 2 to ensure his accommodation on the alternative land to end this controversy. The court could not succeed as no land was found available. If any land is available for allotment, respondent No. 2 can still be accommodated. The State would be still at liberty to allot land to respondent No. 2.

12. The over stressed efforts made by the counsel for the petitioner in a raised voice to urge that proper efforts were not made to accommodate respondent No. 2 and that he should be so accommodated, are more in the nature of desperation and are not required to be decided. What is required to be seen is whether respondent No. 2 has been accommodated on the alternative land or not. The ratio of law laid down in *Pyare Lal and Ors. v. Kamla Rani* 1976 P.L.J. 334 cited by the counsel would not apply in this case as it was a case where the tenant had failed to take possession of the land allotted and war-rani of possession was issued against the tenant on account of this failure. It is in this background, this Court took the view that he is not entitled to the protection of Section 9-A of the Act. It was further observed that the tenant would cease to be a tenant after allotment of a land and after issuance of warrant of possession. That situation does not arise in this case. The significance of the word "adjust" was not considered in this case.

13. The counsel for the petitioner then referred to an order passed in R.O.R. filed by Mula Singh, whose appeal was rejected by the Commissioner. This order was never placed on the record of this file for the respondent No. 2 to respond thereto. In my view, this would also be of not any help to the cause of the petitioner as land in possession of Mula Singh has been found more than permissible area and the Collector has been directed to enquire into this aspect separately. This order does not show if that land is now available for accommodating respondent No. 2. Thus, I have not been able to persuade myself to accept any of the contentions raised by the petitioner and would dismiss the writ petitions being without merits.