

(1970) 11 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2180 of 1969

Mansha Singh

APPELLANT

Vs

The Commissioner (Revenue) Ambala Division and Others

RESPONDENT

Date of Decision : 23-11-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226, 227
Punjab Village Common Lands (Regulation) Act, 1961 — Section 10A

Citation : AIR 1972 P&H 80

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Judgement

1. Barren or Banjar land measuring 98 kanals 14 Marlas in area, being a part of the shamilat or common land of village Bodhni, Sub Tehsil Guhla in Karnal District and vesting as such in the Gram Sabha, respondent No. 3, was taken on lease by the petitioner in an auction held in 1956 for a term of 20 years, beginning from Kharif 1956 to Rabi 1976. A regular lease deed was executed in his favour by the Sarpanch on 16-4-1956. The petitioner claims to have spent a good deal of expense and labour in reclaiming this land and in making it fit for cultivation. He also claims to have made a number of improvements like sinking of tubewells, erection of structures for his own residence and as a shelter for his cattle etc. The lease was, however, cancelled by the Collector Kaithal, respondent No. 2 by his order dated 9-1-1969 (Annexure "B" to the petition) on the application of the Sarpanch under S. 10-A of the Punjab Village Common Lands Regulation Act, 1961 on the ground that the lease was detrimental to the interests of the Panchayat. A revision (Annexure "C") filed by the petitioner was dismissed by the Commissioner of Ambala Division, respondent No. 1, by his order dated 15-7-1969 (Annexure "D/1").

2. The petitioner has, therefore, filed this Civil Writ petition under Articles 226 and 227 of the Constitution of India for quashing the orders and proceedings taken against him by the respondents for the cancellation of the lease. It is alleged that leases had been granted under similar circumstance to 24 other

parties and that in their case the leases had only been varied by the Collector Kaithal and that the lessees had been allowed to continue in possession on payment of an enhanced rent which was equal to 2 1/2 times the rate of rent originally agreed upon. Annexure "A" is the order passed by the Collector in the case of the 24 other lease-holders and the petitioner is alleged to have been discriminated against in violation of Art. 14 of the Constitution of India. The petitioner was also willing to accept a revision of the terms of the lease on the same lines as had been done in the case of the other 24 lease-holders as may appear from the order Annexure "B" of respondent No. 2. This singling out of the petitioner for the cancellation of the lease is alleged to be mala fide and also violative of the petitioner's fundamental rights of property guaranteed by Art. 19 (1) (f) of the Constitution of India. The land is said to have been acquired for the Gram Sabha which would be a "State" for the purposes of Art. 12 of the Constitution of India and the petitioner being a small landowner had to be paid compensations at the market rate for the deprivation of his property. The lease as granted in 1956 was perfectly valid according to the law then prevailing and could not be varied or cancelled to the petitioner's disadvantage. This assumption of a drastic remedy of cancellation of the lease under the Punjab Village Common Lands (Regulation) Act, 1961 in addition to the regular remedies available under the ordinary civil law is said to vest the respondents with discriminatory and unbridled powers without laying down any guidelines and the vires of Section 10-A of the Act and the rules framed thereunder has also been challenged.

3. In his return, respondent No. 3 has joined issue with the petitioner as to whether the latter was a defaulter or whether he had been paying the rent regularly. The impugned orders Annexures "B" and "D/1" may, however, show that this matter is no part of the real controversy between the parties and that the irregularities in payments of rent or defaults of this nature had in no way led to the passing of the impugned orders. The respondents may further appear to have wrongly denied the petitioner's averment that he was willing to accept a revision of the terms of his lease on the same lines as had been done in the case of the other lessees in this village. In this connection, reference could be made to paragraph 2 of the Collector's order dated 9-1-1969 (Annexure "B"). It may appear that an ex parte order had been passed earlier against the petitioner and that it had been reviewed and set aside on petitioner's application. Petitioner's absence or non-appearance on any hearing cannot be taken as his refusal to abide by the terms of the compromise offered to the other lease-holders in the village and after this ex parte order had been set aside the petitioner had prayed that he may be allowed to keep the land in his cultivating possession till the expiry of the lease period or for another term of 2 years by increasing the rent to 2 1/2 times of the previous rate of rent as had been done in the case of 24 other lessees of this very Panchayat. The prayer may appear to have been declined because it was resisted by the counsel for the Panchayat who had argued that the land had been leased out to the petitioner in 1956 at a nominal rate of 6

annas per bigha per year while the prevailing market rates for such leases were not less than Rs.21/- per bigha or Rs.100/- per acre.

As regards the enhancement of the rate to 2 1/2 times in the case of other lessees, the counsel for the Panchayat had pointed out that an appeal had been filed by the Panchayat who was not satisfied with that meagre enhancement. It may, however, be observed that according to paragraph 11 of the writ petition which has been admitted by the respondents, this appeal filed by the Panchayat has since been dismissed by respondent No. 1 and as a result the other 24 leaseholders are continuing to be in possession of their respective holdings under the revised terms mentioned above.

4. Such leases were granted by auction under Rule 4 of the Punjab Village Common Lands (Regulation) Rules, 1955 which were in force at the time. The pertinent portions of the rule are as follows:--

"4(i) All leases of Shamilat land shall be by auction:

Provided that x x x x

Provided further that x x x x

(ii) Only cultivable land may be auctioned on a long-term lease, while non-cultivable land shall not be leased for a period exceeding five years.

x x x x

(ix) In every case of lease, a lease deed shall be duly executed by a lessee, who shall be bound to surrender to the Panchayat possession of the land leased to him if he defaults in the payment of rent, subject to the relevant provisions contained in the Punjab Tenancy Act, 1887."

5. Lands which had been allowed to grow barren (Banjar) because of landowners' failure to cultivate them for a certain number of harvests were cultivable lands in spite of the temporary neglect and it is the common case of the parties that under Rule 4 (ii) supra, banjar lands could be leased out in 1956 by auction for a long term like 20 years. It is not the respondents' case that the lease as granted in 1956 was not strictly in accordance with the provisions of the rules or of the Act under which these rules had been framed.

6. The Punjab Village Common Lands (Regulation) Act of 1953 was repealed and re-enacted as an Act of the same name passed in 1961. A fresh set of rules known as Punjab Village Common Lands (Regulation) Rules, 1964 were framed under the re-enacted Act of 1961 and the rules framed under the repealed Act were likewise repealed by Rule 23 of the new set of rules. These Acts would hereinafter be referred to briefly as "the Act of 1953" or "the Act of 1961" as the case may be and references to any rules, unless there is an indication to the contrary may be taken to be the rules of 1964. The rules came into force when they were published in a Gazette Notification dated 3-2-1964. Section 10-A was then inserted in the Act of 1961 by an amending Act which came into force in

May, 1964. This section, amongst other things, authorised the Collector to revise the terms and conditions of any lease, contract or agreement entered into by a Panchayat in respect of any land vested or deemed to be vested in it whether such lease, contract or agreement was entered into before or after the commencement of the Act of 1964. If the Collector felt satisfied on examination of the Panchayat records or otherwise that the lease, contract or agreement was detrimental to the interest of the Panchayat in the manner prescribed, then the Collector could under certain circumstances cancel the lease, contract or agreement or vary the term thereof unconditionally or subject to such conditions as he thought fit. The party affected was, however, to be afforded an opportunity of being heard before any such orders were passed. Sub-section (5) of S. 10-A makes provision for the payment of compensations in the following words :--

"(5) Where under this section any lease, contract or agreement is cancelled or deemed to be cancelled or its terms are varies, the lessee or the person with whom the contract or agreement has been entered into, who suffers by such cancellation or variation, is entitled to receive compensation to be assessed by the Collector for any loss or damage caused to the lessee or such person which naturally arose in the usual course of things from such cancellation or variation; Provided that no such compensation shall be given for any remote and indirect loss or damage sustained by reason of such cancellation or variation."

7. It may be observed that Section 10-A was inserted in the Act of 1961 after Art. 31A of the Constitution of India has been amended by the Constitution (Seventeenth Amendment) Act, 1964. By this amendment, a second proviso under Clause (1) of Art. 31A, of the Constitution of India was inserted as follows:

"Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides, for payment of compensation at a rate which shall not be less than the market value thereof."

8. It would, therefore, be pertinent to observe that if the Collector was to be given the power to vary or cancel the leases in May, 1964, it was necessary, in deference to the Constitutional Amendment mentioned above to make a provision like sub-section (5) of S. 10-A for payment of compensation in cases where the right of property like a lease was taken away from a citizen of India according to the Supreme Court ruling in *Municipal Corporation for Greater Bombay Vs. Lala Pancham of Bombay and Others*, , a tenant's interest in demised premises is "property" within the meaning of Art. 19 (1) (f) of the Constitution of India subject to the provisions of Clause (5) of that Article. It was observed that a tenant had both under the Transfer of Property Act and under the Bombay Rent Control Act an interest in the demised premises which squarely

fell within the expression "property" occurring in sub-clause (f) of Clause (1) of Art. 19 of the Constitution of India.

9. It is the common case of the parties that the petitioner does not hold land in excess of the permissible area or the ceiling limit applicable to him under the Agrarian legislation of this State. The petitioner was, therefore, entitled to payment of compensation at rates which could not be less than the market value of the property of which he had been deprived by the impugned orders or proceedings of the respondents. He was entitled to the payment of such compensations not only because of the Constitutional guarantees but also by S. 10-A (5) of the Act of 1961 which may appear to have been drafted in conformity with the amendments brought about by the Constitution of India by the Constitution (Seventeenth Amendment) Act of 1964.

10. Rule 7-A was inserted in March, 1965 to lend meaning to Clause (iii) of sub-section (2) of S. 10-A of the Act of 1961. A lease could be cancelled or varied under this clause if it was detrimental to the interest of the Panchayat in the manner prescribed. According to the interpretation Clause (f) of Section 2 of the Act of 1961, "prescribed" means prescribed by rules made under the said Act. It was, therefore, necessary to specify in the rules as to the manner in which the lease was to prejudice the rights of the Panchayat if its terms were to be varied or the lease itself was to be cancelled by the Collector. It was for this reason that Rule 7-A was inserted in March, 1965, Clause (iii) of Rule 7-A explains that a lease, contract or agreement is to be deemed to be detrimental to the interest of the Panchayat if it has resulted or is likely to result in a loss to the Panchayat. If the petitioner is paying nominal rent at a rate which is a small fraction of the market rates prevailing these days, it can very well be said that the lease is "detrimental" to the interests of the Panchayat as prescribed" within the meaning of Section 10-A (2) (iii) of the Act of 1961. That does not, however, mean that the respondents could have ignored the provisions of sub-section (5) of the said section with regard to the payment of compensations for the deprivation of the petitioner's property. The necessity for payment of these compensations should have been more keenly felt in view of the marked difference in the agreed and the market rates of rent. The loss or damage caused to the petitioner because of cancellation of his lease may appear to have naturally arisen in the usual course of things from the said cancellation and it cannot be said that this loss or damage has been sustained by any remote reasons.

11. Shri Mehtani, that Assistant Advocate-General for the State of Haryana relied on two Division Bench rulings of this Court in Kangra Valley Slate Co. Ltd. v. Kidar Nath AIR 1964 P&H 503 and Jaimal v. Commr. Ambala Division 1969 P LJ 378 but these rulings had not taken into consideration the vires of Section 10-A of the Act of 1961. The ruling in Kangra Valley Slate Co. Ltd. AIR 1964 P&H 503 had been given before Art. 31A of the Constitution of India had been amended by the Constitution (Seventeenth Amendment) Act of 1964. These rulings do not,

therefore, afford us any significant help in disposing of the contentions raised by Shri Achhra Singh, the learned counsel for the petitioner. It is conceded by Shri Mehtani that respondent No. 3 is "the State" as defined in Art. 12 of the Constitution of India and that acquisition for the Panchayat would be an acquisition by the State within the meaning of Article 31A. If any authority is needed in this connection, reference could be made to the Supreme Court ruling in *Ajit Singh Vs. State of Punjab and Another*, where the Hon"ble Judges were pleased to observe as follows:--

"The Gram Panchayat is a local authority and by virtue of the definition of "State" in Art. 12 stands included in that term. Therefore, a law providing for the transfer of ownership or right to possession to the Gram Panchayat is for the purpose of Art. 31A (1) and (2), a law providing for the compulsory acquisition or requisitioning of the property."

12. In both the impugned orders, respondents Nos. 1 and 2 have not applied their mind on the question of award of compensation to the petitioner for the premature termination of the lease. As the writ petition deserves to succeed on this ground alone, it is unnecessary to go into a number of other submissions made by Shri Achhra Singh.

13. I, therefore, allow this writ petition and quash the impugned orders and proceedings taken by the respondents. If the petitioner's lease is to be cancelled or varied, the question of payment of compensation in accordance with the provisions of Section 10-A (5) of the Punjab Act of 1961 and Art. 31A of the Constitution of India should also be taken up simultaneously. The respondents shall pay the petitioner's cost.

14. Petition allowed.