

(1987) 03 SC CK 0066

In the Supreme Court Of India

Case No : Civil Appeal No. 1232 Of 1986

Mohan Lal (Dead) by Lrs.

APPELLANT

Vs

Kartar Singh and Others

RESPONDENT

Date of Decision : 03-03-1987

Acts Referred:

Citation : (1987) SCC 485 Supp

Hon'ble Judges : M. P. Thakkar, J;B. C. Ray, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Having heard counsel and having considered all the relevant aspects we are of the view that the decision in State of Punjab v. Bhai Ardaman Singh requires reconsideration. It has been observed therein in the context of the application of tenants who were said to have been forcibly dispossessed that:

The tenants alleged that the first respondent was in wrongful or unauthorised possession of the lands previously occupied by them. But in order that the jurisdiction of the Collector to hold a summary enquiry and to pass the order complained of may be attracted, it was further necessary to establish that under clause (b) of S. 43(1) the person in wrongful or unauthorised possession was not entitled to the use and occupation of the lands under the provisions of the Act. Counsel for the State of Punjab is unable to invite our attention to any provision which renders the first respondent disentitled by virtue of the provisions of the Act to the use and occupation of the lands. S. 43(1)(b) has, therefore, no application. The condition precedent to the investment of jurisdiction in the Collector being absent, the revenue authorities had no power to pass the order in ejectment which they purported to pass.

2. We do not see any warrant for the proposition that in order to attract S. 43(1) (b) there should be a specific and express provision in the Tenancy Act itself to the effect that those who are in illegal occupation will not be entitled to use the

land. The Collector has been invested with the power to eject unlawful occupants under S. 43(1)(b). The provision will become meaningless if even in cases where a tenant admittedly in possession hitherto is forcibly dispossessed and yet the Collector has no jurisdiction to evict him by holding an appropriate enquiry on being satisfied that the tenant was forcibly dispossessed. Certainly, no express provision providing that a person in unlawful occupation will not have a right to continue in possession is necessary. By the very nature of his occupation being found to be unlawful, he has no legal right to continue in occupation of the land. It is implicit in S. 43(1)(b) that an unauthorised or unlawful occupant has no right under the said Tenancy Act to remain in possession. In view of the numerous judgments of this court in regard to tenancy legislation the said decision requires reconsideration. In view of the fact that the provisions constitute a complete code and are specially enacted to protect the tenants without obliging them to resort to time-and-money-consuming civil suit, the decision in Ardaman Singh case requires reconsideration.