

(1971) 05 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 126 of 1970

Narain Dass

APPELLANT

Vs

Bhagwan Dass and Others

RESPONDENT

Date of Decision : 11-05-1971

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Punjab Tenancy Act, 1887 — Section 8

Citation : AIR 1972 HP 96

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : P.N. Nag, for the Appellant; Romesh Chand, for Nos. 1 and 2 and C.L. Kapila, for Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This Writ Petition has been filed by Narain Dass landlord under Articles 226 and 227 of the Constitution of India, calling in question the order dated 16th March, 1970 of the Financial Commissioner, Himachal Pradesh, in a third appeal filed by the petitioner before him and which has been dismissed. Narain Dass being landlord of Khasra Nos. 131 and 132 Tika Matiar Dakhli Nagrota filed a suit u/s 77 of the Punjab Tenancy Act in the Court of the Assistant Collector, 1st Grade, Kangra, against his tenants Bhagwan Dass and Roshan Lal, respondents Nos. 1 and 2, and the allegations were that these tenants had not paid the rents from Rabi 1962 to Rabi 1964 and hence they should be ejected from their tenancy. The learned Assistant Collector decreed the suit in respect of Khasra No. 131 and also decreed it in respect of 2 Marias of Khasra No. 132 of which the total area is 4 Kanals and 3 Marias. Accordingly the suit was dismissed in respect of 4 Kanals and 1 Marias of Khasra No. 132 and it was held that the tenant-respondents had become occupancy tenants of this land u/s 8 of the Punjab Tenancy Act. It was held that the tenants and their fore-fathers are in possession for more than 100 years, that they were settled near the disputed land and are permanent residents there and that their rent was one-third of the

produce previously and thereafter they were paying one-half of the produce and the assessed rent was uniform and according to the respondents also favourable to the landlord. On these findings, the two tenants were held to be occupancy tenants of the disputed land. Narain Dass came in appeal before the Collector and his appeal was accepted on 30th August, 1966. The tenants were held to be non-occupancy tenants or tenants-at-will and because they had failed to pay the rent they were ordered to be ejected from the land. The respondents came in appeal before Commissioner who accepted the appeal and again held them to be occupancy tenants. Finally the landlord-petitioner Narain Dass came in third appeal before the Financial Commissioner which is the subject-matter of present writ petition. His appeal has been dismissed and now he has taken resort to Articles 226 and 227 of the Constitution.

2. It has been contended on behalf of the petitioner that the tenant-respondents could not be held to be occupancy tenants. Section 8 of the Punjab Tenancy Act, according to the petitioner, gives unlimited powers to Revenue Courts to declare any person as occupancy tenant. As such the said section is violative of Article 14 of the Constitution because it is bound to be interpreted in different manner in relation to different tenants. It is then contended that there is a distinct class of tenants known as "Basiku Upahu" in the District of Kangra. These tenants are settled on the land by the proprietors and there is a presumption of their permanency of tenure. Rather an implied promise not to evict them exists along with their tenancy contract. It is stated that the tenant-respondents could not be considered "Basiku Upahu". They could at most be "Upahu" having been settled near the land and hence they could not be conferred the right of occupancy. In this connection a reference is made to Kangra Gazetteer (page 395) which contains the settlement report of Sir James Lyall who performed the first settlement of Kangra District. It is contended that this Court has superintendence over the subordinate Courts and the decision of the Financial Commissioner should be set aside.

3. The respondents have contested the petition on the allegations that the same is not maintainable under Articles 226 and 227 of the Constitution which provide for an extraordinary remedy. The petitioner having tried three appeals and one regular suit, ultimately did not succeed before Revenue Courts. Even if the decision is erroneous, it cannot be re-opened in this manner. It is also contended that a civil suit can be filed and so there is an alternative remedy. It is stated that the tenant-respondents are "Basiku Upahu" and at any rate their long possession with fixed and favourable rent paid to the landlord and devolution of tenancy by inheritance with no instance of ejectment by the landlord, are sufficient to raise the presumption of permanent tenancy. Besides this, the tenants were also settled adjoining the land and they constructed their house over it. They are in possession of the house as well as the tenancy land since the days of their ancestors. Thus they were settled with a promise never to evict and they are occupancy tenants. Section 8 of the Punjab Tenancy Act is not violative of any provisions of the Constitution and the Financial Commissioner decided the

case in a judicial manner. Thus the tenant-respondents claim that no case is made out for interference under Articles 226 and 227 of the Constitution.

4. We shall at once advert to the scope of Article 227 of the Constitution. This article provides that the High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The nature and extent of this "superintendence" by the High Court has been well defined in several decisions. It would be useful, in this connection, to refer to AIR 1952 Madh Bha 51, Jagannath v. Mt. Puniya. The following observation was made:--

"The power of superintendence under Article 227 is not restricted to cases of non-exercise or illegal exercise of jurisdiction but extends also to cases where there has been obvious miscarriage of justice because a Court or a tribunal has approached the matter entrusted to it in an arbitrary or despotic manner and against all rules of natural justice. But the power cannot be exercised to disturb a decision of a Court or a tribunal merely because it has mis-conceived a point of law or come to a wrong decision of the facts."

5. A similar observation has been made in Bhutnath Chatterjee v. State of West Bengal and Ors., (1969) 3 SCC 675 , that--

"Normally, the High Court exercises jurisdiction under Article 227 of the Constitution to ensure that a subordinate court or tribunal does not transgress the limits of its jurisdiction. The jurisdiction with which the High Court is invested is not appellate; it cannot seek to correct what it regards as merely an error of law or fact."

6. The ratio of these two cases is, that a mere error of law or fact cannot be a ground for interference with the decision of the subordinate court by way of exercise of powers under Article 227 of the Constitution. It is then to be seen, as to whether the decision of the learned Financial Commissioner can be considered to be manifestly incorrect or unwarranted on the facts of the case. Certainly it is not a case in which the subordinate court has exercised its powers in an arbitrary or despotic manner or even against all rules of natural justice. The distinction between "Basiku Upahu" and "Upahu" simpliciter has been referred to by this Court in R. S. A. No. 243 of 1967 (Him Pra) Diwana v. Hukam Chand decided on 14th August 1968. His Lordship referred to 1921 Lah LT 9, Kirpa and Jhala v. Tirhu, and utilised the following passage of the settlement report of Sir James Lyall --

"This distinction which I have drawn between the "basiku opahu", or tenant settled down on the land he farms, and the "opahu" whose home, though in the neighbourhood, is not connected with the farm, is one which is, I think, generally recognised. It is based on the presumption that, in the one case, to induce the tenant to move, build, and settle down, he must have been led to expect some permanence of tenure; in the other case the same presumption does not arise. But to say that by custom and feeling of the country the whole question of right

depends upon, whether the tenant lives on the land or not, is to say too much, and to draw a more distinct line, between the two classes than really existed or exists."

Sir James Lyall went on to say--

"that the length of occupancy also carries great weight and though it has been repeatedly laid down that the mere duration of occupancy does not create occupancy rights it is plain that such duration is a most important piece of evidence regarding the intentions of the parties."

7. It is thus obvious that the distinction between "Busiku Upahu" and "Upahu" simpliciter based on the facts that the former is settled on the land while the other is not so settled, does not very much decide the question. It is the long occupancy coupled with other circumstances which lends support for a presumption that the tenant was settled with a promise never to evict. In *Sahuru v. Shiv Ham* 1958 Lah LT 27 a reference was made to the report given by Sir James Lyall and a distinction was drawn between "Basiku Upahu" tenant and "Upahu" tenant. The facts found were that the tenants were settled on the land by the proprietors more than 100 years ago and that they lived near the land itself and the learned Additional Financial Commissioner held that the tenants became entitled to occupancy rights u/s 8 of the Punjab Tenancy Act. In 1952 Lah LT 1 (Rev. Rul) (*Tota Ram v. Rana Bashist Singh Chandra*) one of the learned Financial Commissioners of Himachal Pradesh has held that:--

"Whenever land is let out to a tenant on a stipulated rent and it is not specifically stated at the time as to how long the tenancy would last or how it would be determined, there is considerable room for the natural presumption to arise that at the time of granting the tenancy, there was an implied agreement between the landlord and the tenant that the tenancy would last so long as he paid the rent."

It is further observed that:--

"In all cases u/s 8 the burden of rebutting the natural presumption of an implied promise if it exists must lie on the landlord, and if he does not discharge this burden and effectively rebut the natural presumption, the latter must be given effect to and the tenants' claim to occupancy tenancy accepted."

8. With these two decisions of the Financial Commissioner before him, the impugned order could legitimately be passed by the Financial Commissioner. It has been found as facts in the case, that the tenant-respondents have been in possession since more than 100 years and that they were settled on a land adjoining to that tenancy. Their fore-fathers constructed a house and started living. There is no instance of their eviction or the eviction of their predecessors-in-interest. The tenancy has devolved from generation to generation. The rent is also uniform and is stipulated one. There is no indication that the rent is unfavourable. With these findings of fact established before him, the learned Financial Commissioner cannot be stated to have given an arbitrary decision. As I

have stated before, even if his decision is held to be erroneous in law, that would not give a ground to the petitioner to challenge the decision by way of writ under Article 227 of the Constitution. It is to be understood that he has not transgressed the limits of his jurisdiction. This Court is not sitting in appeal against his judgment. Therefore, I am confident to say that the petition under Article 227 of the Constitution is not entertainable.

9. Now, we advert to the case of the petitioner under Article 226 of the Constitution for a writ of the nature described therein. -It has been asserted by him that Section 8 of the Punjab Tenancy Act is capable of a very wide application. It has not been circumscribed by any limits so that it can be ascertained as to which ground is considered sufficient and which insufficient for conferring rights of occupancy upon a tenant. The argument is devoid of any merit. Sections 5 and 6 of the Act are no doubt more specific and lay down certain circumstances under which rights of occupancy can be held or deemed to exist in favour of a tenant. The legislature could not, possibly contemplate all the eventualities and, therefore, what was not covered under Sections 5 and 6 which could be treated so as to confer a permanent right of tenancy, has been brought in u/s 8 of the Act. It does not mean that the Courts are free to evolve any formula which they prefer to evolve in this connection. There have been repeated decisions which lay down certain principles, based on which a claim for permanent tenancy can be founded. There can be no departure from these principles and the very fact that permanent rights of tenancy are to be conferred, restricts the Court from taking resort to such factors which are per se in conformity with a temporary tenure of land. No question can, therefore, arise for violation of Article 14 of the Constitution. Therefore, the validity of Section 8 of the Punjab Tenancy Act cannot be questioned on any such ground.

10. It is, therefore, evident that no sufficient grounds have been made out for exercise of the powers conferred by Articles 226 and 227 of the Constitution. The very plenitude of these powers requires a cautious exercise of it. I would, therefore, hold that the petition is not maintainable and should be and hereby is dismissed.

11. Costs shall be paid to the respondents. Counsel's fee assessed at Rs. 100/-.