
(1968) 03 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 383 of 1964

Punnu Singh and others

APPELLANT

Vs

The Financial Commissioner and others

RESPONDENT

Date of Decision : 25-03-1968

Acts Referred:

East Punjab Utilization of Lands Act, 1949 — Section 3

Citation : (1968) 03 P&H CK 0051

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Mani Subrat Jain, for the Appellant; Anand Sarup Advocate General Haryana with Shri J.C. Verma for Respondents Nos. 1 to 3 and Mr. M.R. Mahajan, for Respondents Nos. 4, 6 and 7, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—Three main points have been pressed by Mr. Mani Subrat Jain, Advocate for the petitioners, in this writ petition namely:

(i) that an acquired evacuee property belonging to the Central Government which is not leased out by the Central Government itself or which may not have been leased out earlier by the Custodian, can be taken over by the Collector u/s 3 of the East Punjab Utilisation of Lands Act (38 of 1949), (hereinafter called the 1949 Act);

(ii) that irrespective of whether possession of land had been rightly or wrongly acquired by the Collector u/s 3 of the 1949 Act, lease of such land once granted u/s 5 of that Act cannot be cancelled on any ground not covered by section 6; and

(iii) that even in a case squarely falling u/s 6, a lease u/s 5 of the Act can not be terminated without serving on the leasee a notice under rule 5 of the Punjab Utilisation of Land Rules, 1950.

Acquired evacuee banjar land was allotted by the Rehabilitation Department on quasi permanent basis to one Mst. Gian Kaur. Possession of the land was taken over by the Collector by order, dated April, 18, 1957, u/s 3 of the 194b" Act as Gian Kaur had not cultivated the said land for the requisite number of years. By order, dated May 12, 1957, the land taken over from Mst. Gian Kaur u/s 3 was leased out to the petitioners by the Collector, Hissar, u/s 5 of that Act. The petitioners were evictees of small landowners u/s 9(1) (i) of the Punjab Security of Land Tenures Act (10 of 1953), and had to be resettled on other lands. The Commissioner later accepted Mst. Gian Kaur's application for revision of order, dated May, 12, 1957, and remanded the case for a fresh decision to the Collector. But this had no effect on the case as the Collector by his post remand order, dated August 14, 1961, upheld the order of acquisition of land from Gian Kaur u/s 3. The original leases in favour of the petitioners having expired, fresh leases in favour of the respective petitioners were granted by the Collector on March 2, 1962, in respect of lands originally given to the petitioners in 1963 and same additional land which had been similarly but subsequently acquired from Mst. Gian Kaur. Possession of those plots of land was given to the petitioners on June 9, 1962. In the Meantime Gian Kaur's allotment was cancelled by the Rehabilitation Authorities on the ground that the same was bogus. The Rehabilitation Department thereupon wrote to the Collector, Hissar, that the leases of unallotted evacuee land given under the 1949 Act should be cancelled. In pursuance of the said departmental instructions the office of the Collector, Hissar, put up a Bote, dated July 21, 1962, (opening part of Annexure "A" to the writ petition), wherein it was slated that according to the instructions contained in the Punjab Government memorandum dated May 23, 19b2, leases of unclothed evacuee land given under the 1949 Act should be cancelled and the lands should be made available for sale as surplus evacuee property. In the same note the office of the Collector made it clear that in this particular case, the land given on lease to the petitioners had already been brought under cultivation by them in the two previous years. The land Utilization Clerk in his note, dated July 24, 1962 (Annexure A) further stated that the land owner not having been traced and not having appeared before the Special Collector and his whereabouts not having been known, the land had been ordered to remain under acquisition by the order of the Special Collector dated August 14, 1961, that it was evident from the statement of the Patwari of the Circle concerned that the land was under cultivation by the tenants and that under the latest. instructions the land which had already been given to pattedars (the leases, was to be cancelled for putting it on sale by the Rehabilitation Department. The Naib Tehsildar made his endorsement on the said note (Annexure "A") to the effect that there had been a gap of more than three years between the allotment order and the acquisition order and that during the period in question the land had been brought under cultivation by the tenants of the allottee, but the allotment of the land had been cancelled by the Rehabilitation Department and now the land vested in the Central Government. He also recommended cancellation of the petitioner's leases solely an account of the latest instructions received from the

Rehabilitation Department. The Collector then passed order, dated August 3, 1962, to the effect "as proposed". This resulted in the cancellation of the petitioners leases on and with effect from August 3, 1962, though the stipulated period of the leases in question had not yet expired. Since this order was passed admittedly without issuing any notice to the petitioners and without affording them any opportunity of being heard, petitioners submitted an application dated September 4, 1962, to the Collector, Hissar, on which the Collector passed an order for the re-examination of the case in consultation with the Tehsildar, Fatehabad, if necessary and on which he further directed that the petitioners should appear before him on September 13, 1962. On the date fixed, i.e. on September, 13 1962, there were admittedly no proceedings before the Collector as the case was put up later with a note that the leases had been cancelled on account of the Government instructions, dated May 23, 1962 (Annexure "B"), but no order had been passed for taking possession from the petitioners. The aforesaid note was put up before the Deputy Commissioner on September 20, 1962, which was not a date fixed in the petitioners' application and of which date the petitioners had no notice. On that day, the collector asked the subordinate authorities to examine the case. The matter then came up finally before the Deputy Commissioner on September 27, 1962, of which date again there was admittedly no notice to the petitioners. On that day the Collector passed an order (Annexure "D") to the effect that the leases had been cancelled in accordance with the instructions of the Rehabilitation Department, but that it would amount to great hardship to the present lessees(the petitioners), if they were evicted, and that, therefore, the petitioners should be treated as cancelled leases ""as already decided" but that they may be treated as tenants of the Custodian for the purposes of the then existing crop for which period they would have to pay the lease-money in accordance with the rules. At the end of the order there is a direction that the petitioners should be "informed accordingly."

2. Subsequently, the Rehabilitation Department made allotment of the land in dispute to respondents Nos. 4 to 9, and, therefore, they were also imp leaded in the writ petition. It has, however, been definitely stated by the petitioners that they continued to remain in possession till their dispossession was stayed by this Court at the time of the admission of this writ petition. The petitioners have also produced the original letter of the Assistant Registrar, Haryana, Rehabilitation Department, Jullunder, dated May 31, 1967, which shows that the petitioners, possession was protected by the Government in pursuance of the stay order issued in this case. The letter has been placed on the record of this case.

3. Against the order of the Collector, the petitioners preferred an appeal, dated November 7, 1962, which was dismissed by the order of Shri S.K. Chhibber, Commissioner, Ambala Division, dated July 31, 1963 (Annexure "E"), wherein he expressed full sympathy with the petitioners on account of their suffering due to a misunderstanding on the part of the Collector, but held that irrespective of the definition of "owner" in the 1949 Act, the fact remained that the land in question had been and was the property of the Central Government and as such it could

not be acquired in any manner even for the allotment purpose under a State legislation. Further revision petition of the petitioners, dated August 7, 1963 (Annexure "F"), was dismissed by the final order of the Financial Commissioner dated February 20, 1964 (Annexure "G") with the following observations:

The petitioners' contention is that there is no provision in the East Punjab Utilisation of Lands Act for cancellation or determination of leases except when there has been a contravention of the conditions of lease. As the learned Commissioner has observed, this may be the case, but what has to be seen is whether the Collector's order in taking over the land under the East Punjab Utilization of Lands Act was legal. The said Act can not be applied to evacuee land. As such, the Collector's order must be treated as one without jurisdiction. The lease has, therefore, been rightly cancelled and as I see no grounds for interference, the petition is rejected.

In short the Financial Commissioner thought that the lands in question were "evacuee lands" and had, therefore, been taken over by the Collector without jurisdiction. Having failed to get redress from the authorities under the Act, the petitioners came to this Court on March 2, 1964.

As already stated, their dispossession was stayed by the order of the Motion Bench (Dulat and Pandit, JJ.), dated March 3, 1964.

4. The State has contested this petition and filed an affidavit of Shri Adhiapak Singh, Under Secretary to Government. Haryana, Revenue Department, dated May 29, 1967, as return to the rule issued in the case. All the relevant facts have been admitted. It has been specifically admitted that the petitioners had not been heard in person before the impugned orders were passed by the Collector, though subsequently their application dated September 4, 1968 was duly considered. The legality of the impugned orders has been justified on the solitary ground that "the land being evacuee in nature is governed by the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and the provisions of East Punjab Land Utilization Act are not applicable" thereto. It is on that basis, states Shri Adhiapak Singh, that the land was allotted by the Rehabilitation Department to unsatisfied claimants who are respondents Nos. 4 to 9 in this case. It is significant that the State has specifically admitted in paragraph 16(a) of its return that the evacuee lands had been acquired by the Government of India u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954 hereinafter referred to as the 1954 Act) In fact it is on that ground that the application of the 1949 Act to the lands in question is sought to be excluded.

5. Respondents Nos. 4, 6, and 7 have filed a separate return and have also contested the writ meditation. "Land" is defined in section 2(e) of the 1949 Act to mean "land which is not urban land and is not occupied as the site of any building in a town or village, but does not include land which is leased by Government or Custodian under any law other than this Act. "Owner" is defined

in clause (i) of section 2 to mean "a person having a proprietary right in the land and includes an allottee, a usufructuary mortgagee or a lessee," The relevant part of sub-section (1) of section 3 of the Act is in the following terms :

(1) Notwithstanding any law to the contrary, the Collector may issue notice to the owner of any land which has not been cultivated for the last six or more harvests to show cause, within thirty days of the date of service of such notice on him, why the land has not been cultivated and in case the Collector does not find the explanation to be satisfactory, he may take possession of the land forthwith for the purposes of this Act :

Provided....

(2)....

Section 5 of the 1949 Act then reads:

Where the Collector has taken possession of any land u/s 3, he may, lease it to any person on such terms and conditions as he may deem fit for the purpose of growing food and fodder crops;

Provided that the period of lease shall not be less than 7 years or more than 20 years.

On the first contention raised by the Learned Counsel for the petitioners, his argument is that the land in question was definitely "land" within the meaning assigned to that expression in section 2(e) of the 1949 Act, as the land had not been "leased" by the Government to Mst. Gian Kaur and the question of the land having been leased by the Custodian to Mst. Gian Kaur did not arise as the land had ceased to be evacuee property with effect from certain date in 1955 when the notification u/s 12 of the 1951 Act had issued in respect of all evacuee agricultural lands in the State of Punjab. Quasi-permanent allotment submitted counsel, can not be equated to a lease. On the other hand Mr. J.C. Verma the Learned Counsel for the State, submitted that "leasee" and "quasi permanent allottee" were synonymous terms and the status of a quasi permanent allottee was exactly that of a leasee. I regret, I am unable to agree with Mr. Verma There are certain well known concepts of a lease. A lease has to be for a certain time express or implied or in perpetuity. Quasi-permanent allotment was (vide paragraph 20 of Chapter 1 of Land Resettlement Manual for Displaced Persons in Punjab and PEPSU by Tarlok Singh) an arrangement made by the Custodian of evacuee property for the management for the time being of property in the charge of an allottee for the period during which (paragraph 19 of Chapter I of Tarlok Singh's book) issues relating to evacuee property were resolved between India and Pakistan, after which alone ownership in our country of property abandoned by evacuees could be conferred on displaced persons of the other country. "Quasi permanent" according to Tarlok Singh's discussion on the subject in paragraph 19 of Chapter I of his book on page 8 was the Keyword coined for the scheme of resettlement introduced in East Punjab and PEPSU in the above

said circumstances. By section 10 of the 1954 Act subsequently rights of ownership were conferred on quasi- permanent allottees formally subject to verification about the extent of the land to which the respective displaced persons were found to have been entitled. Another necessary ingredient of a lease is the consideration of a price paid or promised or of money, or a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the lesser by the lessee. Admittedly quasi permanent allottees were not expected to pay any lease-money. Distinction between a lessee from the Custodian or from the Government on the one hand and an allotted of acquired property from the Custodian or allotted of acquired evacuee property from the Government is also apparent from the definition of "owner" in section 2(f) of the 1949 Act. The word "allotted" has been specifically mentioned there in addition to a lessee in the definition of "owner". If "lessee" were to include "allotted", it would have been wholly unnecessary to mention that class by itself. It is significant that whereas land leased out by the Government is excluded from the statutory definition of land under the 1949 Act and can not, therefore, be acquired u/s 3, land "allotted" by Government on quasi-permanent basis to a displaced person is not so excluded and can, therefore, be taken over by the Collector.

6. Mr., J.C. Verma then referred to the respective definitions of "allotted" and "lessee" as contained in clauses (b) and (e) respectively of section 2 of the East Punjab Displaced Persons (Land Resettlement) Act (36 of 1949) and stated that since in both the definitions, which are reproduced below, reference has been made to the Punjab Government notifications dated July 8, 1949, the rights of leases and allottees were the same:

(b) "Allotted" means a displaced person to whom land is allotted by the Custodian under the conditions published with East Punjab Government notification No. 4892/S., dated the 8th July, 1949 and includes his heirs, legal representatives and sub-lessees;

(e) "Lessee" means a displaced person to whom land is leased by the custodian under the conditions published with East Punjab Government notification No 4891/ S dated the 8th July, 1949, and includes his heirs legal representatives and sub lessees.

The argument is wholly misconceived. The relevant notifications of the Punjab Government are printed at pages 19 to 196 of Tarlok Singh's book dealing with leases. These notifications bring out the distinction between the two classes of displaced authorized occupants of the acquired evacuee land. After a careful consideration of all the submissions made before me by the Learned Counsel for the parties on this issue, I hold that though land which is leased by the Government or Custodian is not land for the purposes of section 3 of the 1949 Act on account of the special definition of that word contained in clause (e) of section 2 of that Act, all such land given to a displaced person as a quasi-permanent allotted according to a scheme contained in the Punjab Government

notification, dated July 8, 1949, falls within the aforesaid definition and can, therefore, be taken by Collector u/s 3. The result is that the land in dispute was "land" within the meaning of section 2(e) of the 1949 Act, as the said land had ceased to be evacuee property in 1955 after the issue of notification u/s 12 of the 1954 Act and it had not been leased out but stood allotted to Smt. Gian Kaur when it was taken over from her by the Collector u/s 3 of 1949 Act. Smt. Gian Kaur was the "owner" of the said land at the relevant time when the order u/s 3 was passed according to the statutory definition of that term contained in clause (f) of section 2 of the 1949 Act. Even if the allotment in her favour could be treated as null and void with retrospective effect the Central Government was in any case the owner of the land. If Smt. Gian Kaur is treated as an owner because of her having been an allotted on the relevant date, the order of the Collector u/s 3 was entirely within his jurisdiction and it is wholly wrong for the authorities under the Act to say that the order u/s 3 was without jurisdiction. In my opinion, it can not be said that a person in whose favour an allotment had in fact been made by the Government under the 1954 Act, should be treated to have been not an allotted during, the period when the allotment was subsisting merely because the allotment had been subsequently cancelled. Even if, however, the position could be otherwise then I think the next question that arises is whether "a person" in clause (f) of section 2 of the. 1949 Act includes the Central Government or not. In common parlance "a person" would include every legal or juristic person and Central Government, i. e. the Union of India, is certainly one. Mr. Verma referred to the Statement of the objects and reasons of the Punjab Utilization of Land (Amendment) Act (24 of 1957) in which it is inter alia stated that u/s 3 of the 1949 Act, a Collector is empowered to take possession of land "of a private person" who cannot explain satisfactorily why that land had not been cultivated for the last six or more harvests. Counsel for the State wants me to infer from the above said passage that the scope of section 3 of 1949 Act is restricted to the lands of private persons only. I do not think it has ever been held that Statement of objects and reasons of a statute can control the meaning of any clear and. unambiguous statutory provision. The only purpose for which a Statement of objects and reasons can be looked into by the Court is for seeing the, historical background of the particular legislation.

Inasmuch as the word used in section 3 is only "owner" and that phrase is defined in clause (f) of section 2 to mean any person having a proprietary right in the land, I do not see any justification for holding that Central Government is not "a person" who could be an owner within the meaning of section 2 (f). If the Statement of objects and reasons of an Act could be looked at, it is significant that such a statement of the principal 1949 Act (published in the East Punjab Government Gazette, dated October 18, 19-19) states that the Bill of the Act was aimed at "bringing all available lands in East Punjab under fodder and food grain crops in order to attain self-sufficiency in the matter of food." I have just mentioned a part of the objects and reasons of the principal Act though I am clear in my mind that no such reference can be made to such statements for the

purpose of interpreting any un-ambiguous word of a statute. Acquired evacuee property belonging absolutely and free of encumbrance to the Central Government by operation of a notification u/s 12 of 1954 Act can, therefore, be taken over by the Collector in the Punjab u/s 3 of the 1949 Act if the case otherwise falls within the four corners of the provision. From whatever angle, therefore, the case is looked at, the order of the Collector, Hissar, dated April 18, 1957, taking over the land in question from the possession of Mst. Gian Kaur cannot be said to have been without jurisdiction.

7. Irrespective of my decision on the above said question, I would still have allowed this writ petition on the short ground that the Collector had no jurisdiction to cancel the leases of the petitioners in a case which did not fall within the four corners of section 6 of the 1949 Act. The section reads:

(1) If a person to whom land has been leased u/s 5 commits a breach of any of the terms and conditions thereof, the Collector shall, without prejudice to any right or remedy against him, have the power to determine the lease and take possession of the land

(2) Where lease has been determined by the Collector, the lessee shall not be entitled to any compensation.

There is no doubt that the land in question had been leased out to the petitioners u/s 5. It is admitted that none of the petitioners committed any breach of any of the terms and conditions of their respective leases. The Collector had, therefore, no jurisdiction to determine the leases of the petitioners and to take possession of the lands from them during the subsistence of the leases. Even the jurisdiction of the Collector to terminate a lease u/s 6 where the case falls within that provision, is subject to rule 5 of the 1950 rules framed u/s 16 of 1949 Act. The rule reads:

The Collector shall, before making an order determining a lease and taking possession of the land u/s 6 of the Act afford a reasonable opportunity to the lessee to show cause why his lease should not be determined and possession of land should not be taken.

As already pointed out it is admitted by the respondents that before making the impugned order determining the leases of the petitioners, the Collector had not even given a notice to the petitioners. Before passing the specific order for taking possession of the lands from the petitioners u/s 6 of the 1949 Act (an order which did not in fact fall u/s 6, the petitioners were not afforded reasonable opportunity to show cause why possession should not be taken from them. The Collector merely passed the order on the office-note and contented himself by saying at the end that the order may be communicated to the petitioners. That is not what rule 5 requires. Though the order of the Collector acquiring the land from Smt. Gian Kaur was within his jurisdiction u/s 3, the order canceling leases of the petitioners, on a ground not covered by section 6 of the 1949 Act was wholly without jurisdiction and the order was otherwise invalid as having been

passed without compliance with the mandatory requirements of rule 5 of the 1930 rules framed under the 1949 Act.

8. There is still another reason for quashing the impugned orders. That is this. The cancellation of the leases of the petitioners has been justified solely on account of the executive instructions issued by the Rehabilitation Department. It has been repeatedly held by this Court that a citizen can not be deprived of his statutory rights by mere departmental instructions. Reference may in this connection be had to the judgment of this Court in *Messrs J. B. Mangharam & Company Hyderabad v. Shri Parshotam Singh*, Deputy Chief Settlement Commissioner, New Delhi (1962) 64 P.L.R. 922, After the current leases come to an end, it will be open to the Collector subject to the provisions of the 1949 Act and the rules framed there under to renew the leases of the petitioners thereafter or not to renew the same for any subsequent period. In any event, the Collector himself can not, under any provision of the 1949 Act, cancel the leases of the petitioners or direct their dispossession on any ground not covered by section 6 and otherwise than in accordance with rule 5 before the expiry of the minimum statutory period of seven years prescribed by section 5.

9. Mr. Kesho Ram Mahajan, the Learned Counsel for the private respondents, raised an additional objection to the effect that no relief can be granted in this case to the petitioners because they have not imp leaded the Rehabilitation Department of the Punjab Government as a party to the case. I do not find any force in this objection. It is statutory order of the Collector under the 1949 Act which has been impugned in this case and all that I have held relating to the executive instructions issued by the Rehabilitation Department is that the Collector under the 1949 Act was not bound by the same and could not in law have overridden the statutory provisions of the said Act because of the said instructions. The Rehabilitation Department was, therefore, not a necessary party to the case. Moreover, Rehabilitation Department of the Punjab Government has no legal status and is not a legal person. In so far as the State of Punjab has already been imp leaded in this case as respondent No. 10, the Rehabilitation Department of the said State is automatically represented in the case.

10. For the foregoing reasons I allow this writ petition, set aside the orders of the Collector the Commissioner and the Financial Commissioner canceling and upholding the cancellation of the leases of the petitioners and directing their dispossession. In the circumstances of the case, there is no order as to costs.