

(1970) 02 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 233 of 1969

Raj Mal and others

APPELLANT

Vs

Financial Commissioner and others

RESPONDENT

Date of Decision : 06-02-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1970) 02 P&H CK 0057

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : Maluk Singh, for the Appellant; G.C. Mittal, for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

P.C. Jain, J.—Raj Mal and others have filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction, quashing the order of the Financial Commissioner dated 18th October, 1968 (copy Annexure "D" to the petition).

2 Briefly the facts as stated in the petition are that the Petitioners are cultivating land measuring 63 Kanals and 2 Marlas situated in village Raj-kot. Tehsil Hansi, District Hissar Mrs. G.H. Ord, Respondent No. 5 who is the land owner, made an application to seek ejectment of the Petitioners in the Court of the Assistant Collector Ist Grade Hansi who vide his order dated 12th October, 1965, ordered the eviction of the Petitioners from the land measuring 38 Kanals and 19 Marlas (copy Annexure "A" to the petition). Feeling aggrieved from the order of the Assistant Collector, an appeal was preferred by the Petitioners but the same was dismissed by the Collector, Hissar, on 20th April, 1966 (copy Annexure "B" to the petition). Still dissatisfied, a revision was filed before the Commissioner, Ambala Division, who made recommendation to the Financial Commissioner, Respondent No. 1. requesting that the orders of the Collector and the Assistant Collector be set aside and application of Respondent No. 5 for ejectment of the Petitioners be

dismissed. The learned Financial Commissioner, however, did not agree with the recommendation and rejected the same and the order of the Collector and the Assistant Collector were upheld. It is the legality and correctness of this order of the learned Financial Commissioner (copy Annexure "D" to the petition) which has been challenged by way of this petition.

No return has been filed on behalf of the Respondents 1 to 4, though served, are not present, nor are they represented by any learned Counsel. Respondent No. 5 is represented by Shri G.C. Mittal, learned Counsel.

3. It was contended by Mr. Maluk Singh, learned Counsel for the Petitioners, that the reservation made by the landowner, Respondent No.

4. was invalid as she did not include an area measuring 59 Kanals and 6 Marlas which was under her self-cultivation. It was also contended by the learned Counsel that the impugned order of the Financial Commissioner was illegal as it was not necessary for the tenants to prove that the land was under the actual cultivation of the Respondent No. 5. According to the learned Counsel, to attract the application of the definition of "self-cultivation" it was sufficient if on the date when the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act), came into force, the land was cultivable and was in actual possession of the landowner. On the other hand, it was contended by Mr. G. C. Mittal, learned Counsel for Respondent No. 5, that the reservation made by the land owner was perfectly legal and that the Petitioners could succeed only if it could be proved that the land which was not included in the reservation, was actually filled and cultivated by the land owner herself/himself either personally or through the persons referred to in the definition or in the relevant rule made under the Act.

5. After giving my thoughtful consideration to the respective contentions of the learned Counsel for the parties and to the relevant provisions of law I am of the view that there is considerable force in the contentions of the learned Counsel for the Petitioners.

6. The Act came into force on 15th April, 1953. There is no dispute as these are the admitted facts on which the respective contentions were advanced by the learned Counsel for the parties, that land measuring 59 Kanals and 6 Marlas was not included in the reservation made by the land owner that this land is in actual possession of the land owner, that it was not leased out to any tenant, that the land was cultivable though in the year 1952 53, it was lying fallow. It was also not disputed that in case the land owner was required to include this area of 59 Kanals and 6 Marlas, while making reservation then the application of Respondent No. 5 for ejectment of the Petitioners had to be rejected.

7. The definition of word "Self-cultivation" as given in the Act on which reliance was placed by the learned Counsel for the Respondents, is in the following terms:-

2(9) "Self cultivation" means cultivation by a landowner either personally or

through his wife or children or through such of his relations as may prescribed or under his supervision.

8. Rule 5 of the Punjab Security of Land Tenures Rules, 1956 (hereinafter referred to as the Rules), gives the list of other relatives through whom, self cultivation may be carried out and reads as under:-

5. Relatives through whom selfcultivation may be carried out.-

In addition to his wife and children, a landowner may under-take the self-cultivation of his land through the relatives mentioned below:

(i) Brothers.

(ii) Collaterals in the first degree,

(iii) Real uncles and nephews, whether maternal or paternal.

Provided that if the land is held by an unmarried female her own relatives, and after marriage her husband's relatives also shall be considered eligible.

9. The question that arises for consideration is whether the term "Self-cultivation" shall be read to mean actual tilling the cultivation of the land by the landlord personally or through the persons referred to in the definition or in the relevant rule on the crucial date as was contended by Mr. Mittal. In my view, no such interpretation can be put on this word. In the ordinary sense the word "Self cultivation" would mean cultivation by a landowner, but by introducing this definition in the Act, the main purpose of the Legislature was to enlarge the scope of the word "Self-Cultivation" by not limiting it to cultivation by a landowner personally, but also to include cultivation through landowner's wife or children, or even through such relatives as are prescribed under Rule 5 of the Rules. If this definition had not been there in the Act, then the word "Selfcultivation" would have meant cultivation by a landowner only and could not include the cultivation of a third person howsoever close relative he might have been of the landowner.

10. From the definition of the terms "self cultivation" no such inference can be deduced that it shall apply only to that land, on which actual crops have been sown by a landowner himself or through the persons referred to in the definition or in the relevant rules. The act of ploughing and preparing of the land is covered by the definition of the word cultivation" as given in Corpus Juris Secundum, Volume 25, which reads thus:

Ploughing and preparing land for crops, or the raising of something that grows from the ground, besides grass. By the cultivation of land is ordinarily understood something more than the gathering of crops which grow spontaneously or with little care. Land which can be cultivated is arable land, that which is adapted to the raising of crops which require annual planting and tillage, as corn, wheat, oats, rye. and barley in this country, and which is susceptible of such cultivation in all ordinary seasons. "Cultivation," as an

agricultural term, has been held not applicable to forestry, or to the removal of mature trees from woodland, nor to the cutting of trees for the purpose of putting the land in condition for grazing purposes nor to the process of extracting turpentine sap

A landowner, as rightly observed by the learned Commissioner, may just prepare the land and allow it to remain fallow for one harvest in order to get better yield. There may be some other reasons for the landowner not to sow the land which is in his possession. I am unable to persuade myself to hold that the word "cultivation" shall mean actual sowing of crop in the land and nothing more. If the interpretation, as desired by the learned Counsel for Respondent No. 5 is put on the word "Self cultivation" then it is bound to lead to absurd results and can give handle to the landowners to successfully evade the provisions of the Act. It may be observed that in the copy of the Khasra Girdawri shown to me at the time of arguments by the learned Counsel for the Petitioners the land in dispute in the cultivation column is recorded as Khud Kasht though it is shown as Khali in the other column. In this view of the matter I have no hesitation in holding that any land which is cultivable, is in possession of the landowner and has not been leased out, shall be deemed to be under his self-cultivation. Thus the view taken by the learned Financial Commissioner cannot be sustained.

11. No other point is urged.

12. For the reasons recorded above, I allow this petition, quash the impugned order of the Financial Commissioner dated 18th October, 1968 (copy Annexure "D" to the petition), and accept the recommendation of the Commissioner. In the circumstances of the case the parties are left to bear their own costs.