

(1967) 12 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2408 of 1963

Smt. Sodhan Devi and others	Vs	APPELLANT
Deputy Chief Settlement Commissioner and others		RESPONDENT

Date of Decision : 01-12-1967

Acts Referred:

Punjab Tenancy Act, 1887 — Section 53

Citation : (1967) 12 P&H CK 0002

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : B.S. Wasu, for the Appellant; Gopal Singh, (Advocate-General Punjab) and Mr. G.R. Majithia for Respondents 1 and 2 and Mr. K.L. Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Shamsheer Bahadur, J.—The dispute raised in this petition for issuance of a writ of certiorari raises question of some importance on which there is no reported decision of this Court.

2. Sodhan Devi and her son Hari Nath petitioner who are now dead and are represented in this Court by their legal representatives have been owners of urban agricultural land measuring 20 Kanals and 9 Marias in Jullundur City. Muslim evacuees were occupancy tenants of this land before partition. These occupancy rights admittedly vested in the Custodian, Evacuee property, after the occupancy tenants had migrated to Pakistan.

3. In 1956 the occupancy rights in the land were transferred to the petitioners who were owners as well of it. Both the petitioners were unable to cultivate the land themselves; Sodhan Devi the first petitioner, being a widow, and her son Hari Nath, the second petitioner, being blind Bhag Singh, respondent No. 3 was, therefore, inducted in the land by the petitioners as a sub lessee. It is not in dispute that the third respondent had been in cultivating possession of 12 Kanals

and 16 Marias of the land from 1956 till Rabi, 1982, when eventually it was transferred in his favour on 11th of December, 1962, under rule 34C of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, which says:-

34C. Where any land to which this Chapter applies has been leased to a displaced person and such land consists of one or more Khasras and is valued at Rs. 10,000/- or less, the land shall be allotted to the lessee.

By an amendment the amount of value has been raised from 10,000/- to Rs. 15,000/-. The third respondent, who has been described as a displaced person in Annexure R. of 11th December, 1962 was transferred 12 kanals and 16 Midas of this land for Rs. 3,840/-, which was the assessed value of the land.

4. The petitioners made a complaint against the allotment of the third respondent, but the application was rejected by the Settlement Officer, Jullundur on 4th of April, 1963, (Annexure B). An appeal preferred by Sodhan Devi was unsuccessful, this having been dismissed by the Settlement Officer delegated with powers of Settlement Commissioner (Annexure C). A further revision petition to the Deputy Chief Settlement Commissioner, with delegated powers of Chief Settlement, Commissioner was dismissed by Mr. Parshotam Sarup on 17th December, 1962 (Annexure D).

5. The point raised by the petitioners before these authorities related to their preferential right of purchase u/s 53 of the Punjab Tenancy Act which says that:-

53(1) A tenant having a right of occupancy u/s 5 may transfer that right by sale, gift, or mortgage, subject to the conditions mentioned in this section.

(2) If he intends to transfer the right by sale, gift, mortgage by conditional sale or usufructuary mortgage, he shall cause notice of his intention to be served on his landlord through a Revenue Officer, and shall defer proceeding with the transfer for a period of one month from the date on which the notice is served.

The remaining subsection deal with the mechanics of the rights which have been bestowed on an owner of occupancy tenancy and what is contended by Mr. Wasu is that the provisions of sub-sections (1) and (2) of section 53 of the Punjab tenancy Act should not have been overlooked by the authorities which transferred the proprietary lights of a portion of the land belonging to them in favour of Bhag Singh who was no better than an occupancy tenant in cultivation. In the order of revision passed by the Deputy Chief Settlement Commissioner on 17th of December, 1963, it was said that the rights conferred by section 53 of the Punjab Tenancy Act stood abrogated by section 4 of the Administration of Evacuee Property Act, 1950, according to which :

4(i) The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

Mr. Wasu submits, and in my opinion rightly, that the preferential right given to the petitioners is not in any way inconsistent with the provisions of the Administration of Evacuee Property Act and consequently nothing said in sub-section (1) of section 4 can possibly take away a right which vests in the owner. It has also been brought to my notice that in sub-section (1) of section 18 of the Administration of Evacuee Property Act it is provided that :-

Where the rights of an evacuee in any land... consist or consisted of occupancy or tenancy rights, nothing contained in any law for the time being in force shall extinguish or be deemed to have extinguished any such rights either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all or any of the powers conferred on him by this Act....

This section, in my opinion, clearly says that the occupancy rights will also vest in the Custodian and it is submitted by Mr. Kapur, appearing for the third respondent, that in consequence of the provisions of subsection (1) of section 18 of the Administration of Evacuee Property Act the occupancy rights had vested in the Custodian.

6. Under a later statute, namely the Displaced Persons (Compensation and Rehabilitation) Act, 1954, power to acquire evacuee property for rehabilitation of displaced persons has been given to the Central Government and under sub section (2) of section 12, when a notification is published for this purpose "the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances". A notification having been published the Custodian, who is the representatives of the Central Government, has now become an absolute owner in the occupancy rights in the land which had vested in the Muslim evacuees. That such property vests in him free from all encumbrances means that the Custodian is not controlled by any unrestricted right of transfer which may have vested in the occupancy tenant.

7. Mr. Wasu has submitted that section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Right) Act, 1952 (hereinafter called the Vesting Act) conferred full proprietary rights on the petitioners who had been given occupancy rights as well as of their Muslim tenants who had become evacuee. Under clause (a) of section 8. -

All rights, title and interest (including the contingent interest, if any, recognised by any law, of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord?

Now, this section of the Vesting Act is controlled, by section 9, which as amended

by Punjab Act 31 of 1958 read as under: -

9(1) Nothing in this Act shall apply to evacuee property as defined in the Administration of Evacuee Property Act, 1950 (XXXI of 1950).

(2) Notwithstanding anything contained in sub section (1), the provision of this Act shall, subject to the provisions of sub section (3), apply to (a) a person who after the commencement of this Act, obtains a right of occupancy from the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act 1954 (44 of 1954); and

(b) * * *

(3) For the purposes of section 3 and sub-section (1) of section 4, the appointed date, in relation to a person referred to in sub-section (2), shall notwithstanding anything to the contrary contained in this Act or in any judgment, decree or order of any Court be: -

(i) in the case of a person who obtains a right of occupancy from the Central Government after the commencement of the Punjab Occupancy Tenant, (Vesting of Proprietary Rights) (Amendment) Ordinance, 1958 the date on which such right is obtained; and

(ii) * * *

It is manifest that the provisions of clause (a) of sub-section (2) of section 9 are independent of what is stated in sub-section (1) and the effect of this amended provision is that a person who has been allotted land by the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act shall have a right to claim property under the Vesting Act with effect from the date of transfer which is 11th of December 1962. It does look inartistic that both sub-section (1) and sub-section (2) of section 9 should be couched in an untrammelled form out of the objects and reasons given for the amendment introduced by Punjab Act 31 of 1958 make clear the reasons which induced the Legislature to give preference to the allottees like the third respondent. The object clause certainly entitles the Court to look at the historical reason for introduction of the amending provision and read with clause (i) of sub-section (3), there can be no manner of doubt that the third respondent has been given a statutory right to claim the allotment which has been made in his favour by the Settlement Officer on 11th of December, 1962.

8. In my opinion, there is no force in this petition which fails and is dismissed. As the matter involved, however, is resintegra and has been decided on first principles, I would make no order as to costs.