

(1972) 05 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : Civil Second Appeal No. 94 of 1971

State of Jammu and Kashmir

APPELLANT

Vs

Isher Dass Charak

RESPONDENT

Date of Decision : 31-05-1972

Acts Referred:

Jammu and Kashmir Tenancy Act, 1980 — Section 56, 84

Citation : AIR 1973 J&K 17 : (1972) JKLR 391 : (1972) KashLJ 229 : (1972) KashLJ 230

Hon'ble Judges : S.M.F.Ali, C.J;Ishwar Singh, J;Jaswant Singh, J;Mufti Baha-Ud-Din Farooqi, J

Bench : Full Bench

Advocate : V.S.Malhotra, Joginder Singh , D.N.Gupta, Advocates appearing for the Parties

Judgement

Bakshi J.

(1) This civil second appeal is directed against the judgment and decree of the Additional District Judge, Jammu, dated 1101971 who affirmed the

decree for possession of land passed by the Sub Judge (C. J. M.) Jammu.

(2) The brief facts of this case are that the plaintiffrespondent filed a suit against the appellant the State of Jammu and Kashmir, with the allegations

that the suit land was held by the plaintiff as a tenant under the original proprietors Santoo and Hari Singh, as such he had acquired the status of a

protected tenant by virtue of the Jammu and Kashmir Tenancy (Amendment) Act, 2005 Samvar. The Revenue Officers namely the Tehsildar and

the Deputy Commissioner forcibly dispossessed him with the help of the Police proclaiming that the Revenue Department had duly purchased the

suit land by virtue of a registered saled deed. Although the plaintiffrespondent filed

a number of representations before the Revenue authorities but all having failed he ultimately served a notice under Section 80 CPC on the State and filed the present suit for possession of land measuring 9 kanals and 3 marals comprising of khasra No. 134 (8 kanals and 19 marlas agricultural land and Ghair Mumkin Khola measuring 4 marlas).

(3) The defendant appellant resisted the suit on various grounds. The main grounds were that the land had been purchased by the appellant from

the original owners and the plaintiff according to law could not be and was not a protected tenant under the appellant. It was also averred by the

defendant appellant that the appellant having become a full owner by purchase for the public purpose, the possession was taken lawfully. It was

admitted by the appellant that the plaintiff respondent was a tenant in the suit land under the original owners. The appellant also challenged the

jurisdiction of the court to try the suit.

(4) The trial court of Sub Judge (C. J. M.), Jammu, framed the following issues :

1. Whether the suit is not triable by this court ? OPD

2. Whether the plaintiff had become a protected tenant of the land measuring 9 kanals and 3 marlas in survey No. 134 prior to the sale in favour of

the defendant ? OPP

3. Did the defendant take forcible possession from the plaintiff in Kharif 1955 and therefore the plaintiff is entitled to return the possession ? OPP

4. Relief ?

(5) After the trial, the court found that the plaintiff was a protected tenant in the suit land under the original owners when he was forcibly

dispossessed by the Revenue authorities with the help of the Police. Having been so dispossessed he ceased to be a tenant and relying on the Full

Bench decision of this court, reported as Nasib Singh Vs. Bajo AIR 1969 J&K 9, held that the civil court had jurisdiction to decide this case.

(6) As regards issue No. 2 the trial court held that the plaintiff respondent was a tenant under the original proprietors and was in possession of the

land as such even prior to the year 2000 Samvat. He having acquired the status of a protected tenant under the Jammu and Kashmir Tenancy

Amendment Act of 2005 Samvat was recorded as a protected tenant of the suit land in Jamabandi of 1959/60. The trial court also found issue No.

3 in favour of the plaintiff holding that the plaintiff was forcibly dispossessed by the Tehsildar with the aid of the Police on 561958. The trial court

further found that the appellant purchased the proprietary rights in the suitland from the original owners in March 1960 after the respondent had

been forcibly dispossessed. The trial court also repelled the contention of the defendantappellant that the land having been purchased by the State

there could be no protected tenancy with regard to the State land under sec. 15 (c) of the Jammu and Kashmir Tenancy Act, 1980 (Samvat) and

held that at the time of forcible dispossession of the plaintiff, the defendant had not purchased the land and was simply a stranger or a trespasser.

On the above findings the trial court decreed the suit. The first appellate court i. e. the Additional District Judge, Jammu, affirmed all the findings of

the trial court and upheld the decree. Hence this second appeal.

(7) This appeal came up for hearing before Hon'ble the Chief Justice on April 7th, 1972. As two substantial questions of law were involved in this

case and the Full Bench decision, 1969 J &K 9 also required reconsideration the matter was referred by his Lordship to a larger bench, as such

this second appeal came up before this bench.

(8) Apart from the reconsideration of the above said Full Bench decision, the two points referred to this bench have been formulated in the order

of reference as under :

(1) Whether or not the suit would lie for restoration of possession when a tenant has been ejected unlawfully and the case falls within the scope of

Section 56 of the Tenancy Act and is barred by the provision of Section 84 (1) (f) of the Tenancy Act ; and

(2) Whether the suit is also barred under Sec. 84 (1) (f) of the Tenancy Act if at the time when the plaintiff was ejected by any person other than

the landlord but when he brought the suit for restoration of possession, the defendantrespondent had purchased the interest of the landlord and so

was de jure and de facto landlord.

(9) The learned counsel for the parties were heard at length. Mr. Malhotra vehemently argued that point of jurisdiction has wrongly been decided

by the courts below. He also contended that Nasib Singh's case was wrongly decided as Section 84 (f) of the Tenancy Act was not kept in view

while deciding the case. Mr. Joginder Singh on the other hand reiterated the

reasoning given in Nasib Singh's case in support of judgments of the courts below.

(10) In order to appreciate this point it is necessary to consider the relevant provisions and trace the history of the changes which have taken place

from time to time in the Tenancy Law called the Jammu and Kashmir Tenancy Act, 1980 (Act No. II of 1980 hereinafter called the Tenancy Act.)

The provision regarding the relief for wrongful dispossession or ejectment of a tenant was provided in section 56 which is quoted as under :

56 (1) In either of the following cases, namely :

(a) If a tenant has been dispossessed without his consent of his tenancy or any part thereof, otherwise than in execution of a decree or in pursuance

of an order under section 49

(b) If a tenant who has been ejected from his tenancy or any part thereof under clause (c) of section 45A and such tenancy or part thereof is sublet

by the landlord, the tenant may, within, (one) year from the date of dispossession or ejectment in cases covered by clause (a) from the date of the

tenancy or any part thereof is sublet in cases covered by clause (b) institute a suit for recovery of possession or occupancy, or for compensation,

or for both.

(2) A tenant who has been dispossessed and who has not instituted a suit under subsection (1) within the period prescribed, shall not be entitled

thereafter to institute a suit in any court for the recovery of possession of a tenancy or for other relief for such dispossession or ejectment."

(11) A perusal of this section would show that when ever a tenant was dispossessed without with file a consent from his tenancy or part thereof he

could suit for recovery of possession or occupancy or compensation or for both within one year from the date of his dispossession or ejectment.

According to clause 2 of this section a tenant who failed to institute the suit under subsection (1) above said within the period prescribed was

debarred from instituting a suit in any court. Similar provision for summary reinstatement of a tenant who had been dispossessed or ejected from

his tenancy otherwise than in due course of law during the period of settlement was also made in section 57 of the Tenancy Act. Under the

provisions of the section the dispossessed tenant could file an application before the Settlement Officer provided he had not been dispossessed

more than three years before the date of such application. Subsection (4) of sec. 57 specifically provided that a tenant who had failed in a suit for

recovery of possession of land was not entitled to get a summary reinstatement under this section and a tenant whose application under this section

had been rejected did not lose his right to institute a suit for recovery of possession or other reliefs under Section 56 of the Tenancy Act.

(12) The jurisdiction of the Revenue Officers and courts were governed by Section 84 and 85 respectively of the Tenancy Act. Clause (g) in first

group of the Section 84 made a provision regarding the applications under section 57 to be filed by a tenant wrongfully dispossessed for summary

reinstatement during settlement operations. According to "" this section all applications falling under section 84 including the above said application

under clause (g) were to be disposed of by Revenue Officers and no court was authorised to take cognizance of any matter with respect to which

an application or proceedings might be instituted. Similarly section 85 subsection (3) clause (f) of the first group provided that the suits by a tenant

under section 56 for recovery of possession or occupation or for compensation or for both shall be instituted and heard and determined by

revenue courts and no other court should take cognizance of any dispute or matter with respect to which any such suit might be instituted.

(13) These provisions

remained without any change till the Jammu and Kashmir Tenancy (Amendment) Act, 2007, (Act No. 1 of 2007) came into force on 12/12/2007

Samvat (24th April, 1950). This Amendment Act made slight changes in Sec. 56 of the Tenancy Act which are not very relevant for our

consideration but the important change made was the insertion of Section 57A which reads as under:

57A (1) During the period fixed by the Revenue Minister for each Tehsil or subdivision of a Tehsil and notified in the Government Gazette when

the rights of protected tenancy are determined and recorded under the provisions of this Act, a tenant may apply to the Wazir Wazarat of the

district in which the tenancy is situate for summary reinstatement on any land from which he has been ejected otherwise than in due course of law.

(2) On receipt of such application the Wazir Wazarat shall make such enquiry as he deems necessary and if he is satisfied that the tenant has been

illegally ejected may order his reinstatement.

(3) No such order shall be passed, if it be proved that the wrongful ejectment took place before 1st Baisakh, 2004.

(4) Nothing in this section shall be deemed to entitle a tenant who has failed in a suit for recovery of possession of land which was determined on

merits and dismissed otherwise than in default, to apply under this section for summary reinstatement in such land or to deprive a tenant, whose

application under this section has been rejected, of his right to institute a suit for recovery of possession or other relief under sec. 56 of this Act." n

(14) A perusal of this section would show that a provision was made for summary reinstatement of the tenant on any land from which he had been

ejected otherwise than in due course of law and not covered by Section 56. Subsection (4) of this section was similar to that of section 57 which

provided that a tenant had a right to file a suit under Section 56 even if his application under this section has been rejected. Conversely he could

not file an application under this section when his suit for reinstatement had been dismissed on merits. Consequently clause (g) of Section 84 was

amended and applications under Section 57A were made triable by the Revenue Officers.

(15) After about two years the Jammu and Kashmir Tenancy (Amendment) Act, 2009, Samvat came into force and it made certain changes in

Sec. 56, 57A and Section 57B was inserted. The important change which is material to be considered was made by addition of subsection 5 to

section 57A whereby an appeal from the order of the Controller under section 57A could be filed before the Land Reforms Officer.

(16) Then some more changes were made in the Tenancy Act in 1955 by the Jammu and Kashmir Tenancy (Amendment) Act, 1955. A new

Section 56 was substituted for the Old Section which had provided for suits for reinstatement The present section empowered the Revenue Officer

to order reinstatement on an application being made by a tenant who was dispossessed after the commencement of the Jammu and Kashmir

Tenancy (Amendment) Act. 1955 namely the Act which brought these changes Section 57 was omitted altogether and Section 57A was also

substituted by a new section. It provided for the reinstatement of the tenants who had been ejected within six months prior to the date of the

commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955. Section 57B was added by this Act which provided for the

prosecution and punishment of a person who ejected a tenant otherwise than in due course of law.

(17) From the above changes brought in by this Amending Act, it is clear that the intention of the legislature was to do away with the suits which

upto that time could be filed under sections 56 and 57 and the legislature wanted to provide summary relief to the tenants illegally dispossessed and

which relief they could get from the Revenue Courts only.

(18) Consequent upon the changes having been brought about in Sections 56, 57A and 57B by the Amending Act of 1955 Sections 84 and 85 of

the Tenancy Act were also amended. Clause (f) of the first group of Section 84 was substituted by a new clause which reads as under :

Applications or proceedings under section 56, 57A and 57B"".

(19) As the provision for filing the suits under Sections 56 and 57 were deleted from the Tenancy Act consequently clause (e) of the first group of

Section 85 (3) was omitted. After the above said amendment the present section 56 which will be the relevant provision for the decision of this

case, is as under :

"56. Relief for wrongful ejectment after the commencement of the Jammu and Kashmir Tenancy (Amendment) Act 1955.

(1) (i) A tenant who after the commencement of the Jammu and Kashmir (Amendment) Act, 1955, is ejected otherwise than in due course of law

may, within six months of the date of such ejectment make an application to a Revenue Officer for reinstatement on the land from which he has

been so ejected.

(ii) On receiving the application the Revenue Officer shall make such enquiry as he deems sufficient and if he finds, that the tenant has been illegally

ejected, shall restore him to possession and may impose on the landlord a fine not exceeding Rs. 200/ and may also award to the tenant such

portion of it as compensation for his wrongful disturbance as he considers fair.

(2) In any enquiry under clause (ii) of subsection (1) the defence of the landlord that the land is required by him for personal cultivation and where

a surrender is not made in writing and is not certified by a revenue officer, the defence of the landlord that the possession of the land was

voluntarily surrendered by the tenant, shall not be entertained.

(20) The above history of the legislation and changes made in the Tenancy Law from time to time regarding the provision for summary

reinstatement of tenants dispossessed otherwise that in due course of law clearly shows that only remedy which was intended to be afforded to the

dispossessed tenant by the legislature was, by way of an application under Section 56 and not by way of any suit. The applications under the

above said section were cognizable only by the Revenue Officers under Section 84 clause (f) and no other court could take cognizance of the

matters with respect to which an application or proceeding might be instituted under Section 56. As such the civil court does not have any

jurisdiction to entertain a suit by a dispossessed tenant. If he avails of his remedy under Section 56 then the Civil Court has no power to entertain a

suit and in case he fails to avail of his remedy within the time prescribed even then the civil suit cannot be filed. This result is apparent from the

opening words of Section 84 which provide that no court shall take cognizance of any matter with respect to which any applications or

proceedings might be instituted. As stated earlier the intention of the legislature appears to be that the remedy provided under section 56 alone

should be availed of by a dispossessed tenant and only the Revenue Officers should have the power to adjudicate upon these matters.

(21) Some confusion has arisen regarding this matter by the decisions of our own High court. The first decision to be considered is Smt. Lakhi Vs.

Sodan Lal and others, AIR 1965 J&K 56 decided by Hon'ble Bhat J in which AIR 1962 SC 547 and AIR 1963 SC 361 were followed and it

was held that when a tenant is dispossessed from his tenancy he ceased to be a tenant and as such the Tenancy Act does not apply and a civil suit

is competent. The main reason which weighed with the Hon'ble Judge was that suits by the dispossessed tenant could only be filed in a Revenue

Court when the relationship of tenant and landlord was admitted between the parties. In the case before the Hon'ble Judge, he found as a finding of

fact that the landlord did not admit the status of the tenant and he had abandoned the tenancy. It further appears that when this case was decided

Sections 84 (f) and 85 were not kept in view. As stated earlier, this section specifically deals with the summary proceedings for reinstatement of

dispossessed tenants. The provisions of the Tenancy Act which were being considered by the Hon'ble Supreme Court, in AIR 1962 SC 547 and

AIR 1963 SC 361, were not similar to the provisions of our Tenancy Act. There was no provision similar to Sections 56 and 84 (f) of our Act.

Similarly when this matter in Nasib Singh's case (AIR 1969 J&K 9) came up before the Full Bench of this Court the attention of the court does not

seem to have been drawn to Section 84 (f) and the deletion of clause (e) from the first group of Section 85 (3) of the Tenancy Act. While deciding

that case Hon'ble Anant Singh J held that the illegally dispossessed tenant had two remedies one being a summary remedy under Section 56 to be

availed of within the period prescribed and the other of filing of a regular civil suit in a civil court within 12 years from his dispossession. This finding

of the Hon'ble Judge was based on AIR 1965 J&K, 56 and AIR 1962 SC 547.

(22) The Hon'ble Chief Justice while agreeing with the judgment proposed by Anant Singh and Bhat JJ, went a little further and held that the

illegally dispossessed tenant had the only remedy by way of a civil suit. He decided this point as under :

I regret I am unable to agree with my learned brother Anant Singh J. on the question that a dispossessed tenant has an alternative right to be put in

possession by taking proceedings in a revenue court within six months of the date of his dispossession, because sec 85 of the Tenancy Act does

not contain any such clause, Furthermore, as I have already mentioned above, a dispossessed tenant ceases to be a tenant as defined in the

Tenancy Act and has therefore no right to be reinstated under the Act. That is why such a tenant gets a right to be reinstated under the general law

that is to say by instituting a suit in a civil court.

(23) As stated earlier Section 84 (f) had escaped the notice of the Hon'ble Judges who decided Nasib Singh's case. If that section had been

noticed then the result would have been different.

(24) For the reasons given above I am of the opinion that Nasib Singh's case was not correctly decided and the correct position according to the

Tenancy Act is that the tenant who is dispossessed otherwise than in due course of law has his remedy under Section 56 alone and the

proceedings are cognizable by the revenue courts only and no civil suit can be filed for that purpose.

(25) Mr. Malhotra appearing for the appellant tried to place reliance on Vallabbhai Vs. Bai Jivi and others, AIR 1969 SC 1190 and argued that

the above Supreme Court case applies to the facts of this case. On scrutiny of this decision it appears that the facts in this case were different as it

pertained to an invalid surrender of the tenancy and for which reason the relationship of landlord and tenant had not terminated. Moreover the

provisions of the Tenancy Act were not similar to our Tenancy Act. So this decision cannot help the appellant.

(26) As regards the second point, the position is very simple. Admittedly the plaintiff/respondent was dispossessed forcibly by the

defendant/appellant. The respondent was holding the land as a protected tenant under the original owners Santu and Hari Singh, The dispossession

of the appellant was not by the landlord but was by a stranger or a trespasser. Even if the defendant/appellant happened to purchase the

proprietary rights from the original proprietor later on that will not change the position because when the cause of action arose the defendant was

not the owner of the land. Section 56 of the Tenancy Act applies when the dispossession is by a landlord, of his tenant otherwise than in due

course of law. This section does not apply to dispossession of a tenant by a stranger. That is purely a civil right which can be enforced by the Civil

Courts As the examination of Sections 56, 57.A and 57B makes it abundantly clear that the intention of the legislature was to give protection to the

tenants against the illegal evictions by the landlords I am supported in this view by a decision of the Division Bench of our own High Court in

Revenue first appeal Kanshi Ram and others Vs. Bhagatu and others reported as AIR 1952 J&K 44. Hon'ble Wazir C. J. in his judgment dealt

with this point as under :

The learned counsel for the respondents argued that the protection given to the tenant is against any one who may or may not be a landlord. We

do not agree with him in the interpretation sought to be placed on the provisions of Section 57A. The use of the word ""tenant"" in Section 57A

Tenancy Act, clearly indicates that the protection is given to the tenant only against a landlord and not against a trespasser. Tenancy Act governs

the relationship of the landlord and tenant alone Section 84, Tenancy Act, enumerates all those applications and proceedings which can be

disposed of by the Revenue officers alone and civil courts Jurisdiction is totally barred in regard to those proceedings Clause (g) of Section 84

deals with applications made under Section 57 by a tenant wrongfully dispossessed. In Section 57 although there is no mention of the word

landlord yet the tenant is given protection only against the landlord and not against any one else. Similarly in Section 57A, Tenancy Act, summary

reinstatement can be ordered in favour of the tenant if he has been dispossessed otherwise than .in due course of law. The tenant cannot avail of

Section 57A Tenancy Act if he is dispossessed by a person other than a landlord. As Sec. 57A has been inserted in the Tenancy Act of the State

and no such provision is found in any Tenancy Act in other parts of India, so rulings on all force are not available, but there are cases of the Punjab

High Court in which it has been held that a suit for recovery of possession by occupancy tenant, who has been illegally dispossessed by person

other than the landlord would be cognizable by a civil court. In Revenue court the suit by an occupancy tenant would lie only against the landlord

and not against a person other than a landlord as under section 50 which corresponds to Section 56 of our Tenancy Act, protection is given to a

tenant only against the landlord and not against any one else. Reliance may be placed on Mian Singh Vs. Fatha, 3 Punjab Re. 1889 and Kesar

Singh Vs. Manual Singh 84 Pun. Re. 1913.

(27) We are therefore, of opinion that application under Section 57A can be filed only if a tenant is dispossessed by a landlord otherwise than in

due course of law, but if a tenant is dispossessed by a person other than the landlord he cannot invoke Section 57A, Tenancy Act, in order to

regain his possession.

(28) For the reasons given above the present suit which has been filed by the plaintiffrespondent a dispossessed tenant, against the defendant a

stranger was cognizable only by the civil court.

(29) In this case the concurrent findings of fact are that the respondent was a protected tenant under the original owners and was forcibly

dispossessed by the defendant so the decree for possession was rightly passed in favour of the plaintiffrespondent.

(30) For the foregoing reasons, I do not find any force in this appeal which is dismissed with costs.

Sd/Bakshi Ishwar Singh Judge

Per Jaswant Singh J.

(1) I have had the advantage of going through the judgment prepared by my learned brother Bakshi Ishwar Singh J and agree with the conclusion

arrived at by him. I however, wish to add few words. The facts leading to this appeal being laid before this bench and the provision of law

governing it are succinctly detailed in the judgment prepared by Bakshi Ishwar Singh J and need not be reiterated.

(2) Sub Section (i) of Section 84 of the Jammu and Kashmir Tenancy Act as amended (hereinafter referred to as "the Act") sets out the matters

which fall within the exclusive jurisdiction of Revenue Officers and are barred from the cognizance of any court. Clause (f) of this SubSection refers

to the application or proceeding under Section 56 of the Act, Now a close scrutiny of clauses (i) and (ii) of Subsection (1) of Section 56 of the Act

would show that the Section contemplates only those applications for reinstatement which are made by tenants who are ejected otherwise than in

due course of law by their landlords and no others. An application by a tenant for reinstatement which alleges ejectment by a stranger i. e a person

other than his landlord does not obviously fall within the scope of these clauses. The net effect of the relevant provisions of the Act (i. e of Sections

84 (i) and 56 (i) of the Act) is that a dispossessed tenant's remedy against his landlord for recovery of possession is confined to proceeding under

section 55 of the Act. In other words his remedy is restricted to an application before a Revenue Officer for reinstatement which he must file within

six months of the date of ejectment. He is debarred from bringing a suit in a civil or revenue court against his landlord, irrespective of the fact

whether he avails of the remedy under Section 56 of the Act or not. As the word tenant has been used visavis landlord. It follows as a corollary

that if the ejectment is by a person other than a landlord a suit for recovery of possession would lie in a civil court and would not be barred by

Section 84 (1) of the Act even though in the interregnum that elapsed between the alleged dispossession and institution of the suit, the person

dispossessing the tenant acquires the interest of the landlord. This is so because what is important to be seen is the position obtaining on the date of

the institution of the proceedings.

(3) Thus while agreeing with the conclusion arrived at by Bakshi Ishwar Singh J. I would answer the question formulated by the Hon'ble Chief

Justice as follows :

A suit would not lie in view of the provisions of Section 84 (i) (f) of the Act for recovery of possession if the case falls within the scope of Section

56 of the Tenancy Act. Only an application before a Revenue Officer would be maintainable.

(4) I would also answer the second question formulated by the Hon'ble Chief Justice in the negative.

(5) I also agree with Bakshi Ishwar Singh J. that Nasib Singh's case reported in AIR J969 J&K 9 (F, B) was not correctly decided. A perusal of

the three separate judgments delivered in the case shows that the attention of the learned Judges constituting the bench was not invited to

subsection (i) of Section 84 of the act, specially to clause (f) of the first group thereof as substituted by Act No. XII of 1955. Subsection (1) of

section 84 as amended in so far as it is relevant for the purpose of this appeal runs thus :

Application and proceedings cognizable by Revenue Officers. (1) The following applications and proceedings shall be disclosed of by Revenue

Officers as such and no court shall take cognizance of the matters with respect to which any applications or proceedings might be instituted.

FIRST GROUP

X X X X

(f) Applications or proceedings under sections 56, 57A and 57B.

SECOND GROUP

X X X X

THIRD GROUP

X X X X

(6) The above provision clearly bars the jurisdiction of any court to entertain a suit regarding any of the matters classified in the three groups set out

therein. Anant Singh J. appears to have been influenced solely by the deletion of subsection (2) of section 56 by the Tenancy Amendment Act XII

of 1955. His attention does not appear to have been drawn to the aforesaid clause (f) of the first group of Section 84 (1) as substituted by the said

Amending Act which clearly excludes the jurisdiction of any court to take cognizance of the matters regarding which an application or proceeding

can be instituted before a revenue officer. As this clause refers interalia to an application or proceeding under section 56, the deletion of the said

subsection (2) of Section 56 was absolutely of no consequence. The dictum laid down by Bhat J. in Smt Lakhi Vs. Sohan Lal and others, AIR

1965 J&K 56, that once a tenant is dispossessed he ceases to be a tenant and cannot sue for recovery of possession under the Tenancy Act, on

which reliance was placed by the learned Judge has, if I may say so with due deference, no application to a case of the instant nature. The facts of

that case were quite distinguishable, That was a case where the plaintiff had brought a suit for possession on the allegation that she was an

occupancy tenant and had been wrongfully dispossessed by the father of defendant Nos 2 to 6. If the aforesaid dictum is held to be universally

applicable to all cases of dispossession of the tenants, it would nullify the provisions of Sections 56 and 84 of the Tenancy Act and render them

absolutely nugatory. Reference in this connection may usefully be made to the decision reported in 90 P. R. 1918 (Full Bench) where it was

interalia held that the word 'Tenant' as used in Section 50 of the Punjab Tenancy Act, which is identical with Section 56 of our Act must be

regarded as meaning a person who formerly held land under another and is wrongfully put out of possession therefrom, in other words an

'extenant'.

(7) The attention of his Lordship the Hon'ble Chief Justice who agreed with the dictum laid down by Bhat J. in Smt. Lakhi Vs. Sohan Lal and

others (Supra) also does not seem to have been drawn to the aforesaid clause (f) of the first group of subsection (!) of Section 84 of the Act.

(8) If his Lordship's attention had been invited to that provision the result would surely have been different. Under Section 56 of the Act, it is not at

all necessary that the relationship of landlord and tenant should subsist between the parties, at the time of the institution of the proceedings. It is

enough if that relationship existed within six months of the making of the application.

Sd/ Justice Jaswant Singh

I agree with the judgment of Bakshi Ishwar Singh J and so also with the

observations made by Jaswant Singh J in amplification thereof,

Sd/ Justice, Mufti Bahauddin Farooqi

Ali C. J.

(1) I entirely agree with the judgment pro. posed by my learned brother Bakshi Ishwar Singh J as amplified by Jaswant Singh J. As, however, I am

taking a view contrary to the one that I took in Nasib Singh Vs. Bajo Ram, AIR 1969 J&K 9,1 would like to add a few lines of my own in order

to give the reasons why I have changed my mind.

(2) In the Full Bench case of Nasib Singh Vs. Bajo Ram (Supra) all the judges were interpreting the provisions of Section 85 of the Tenancy Act in

order to determine whether it contained any bar to the maintainability of a civil suit in the case of dispossessed tenants. The judges comprising the

Full Bench, including myself, having found no express words in Section 85 of the Tenancy Act to exclude the jurisdiction of the civil court, held that

a dispossessed tenant had two remedies open, namely one to file a suit for reinstatement within six months before a revenue court or to move the

civil court for putting the tenant back in possession. My brother, Bakshi Ishwar Singh J has detailed the history of the Tenancy Act and has found

that the attention of the Full Bench was not drawn to Section 84 (1) (f) of the Tenancy Act which clearly contains a bar to the maintainability of a

suit in a civil court in cases where a tenant has been dispossessed by his landlord. Jaswant Singh J. has also indicated this very clearly in his

judgment. It seems to me that while the legislature deleted Subclause (2) in Section 56 by the Amendment of 1955, it took away the bar contained

in Section 85 (1) (f) of the Tenancy Act. Our attention was not drawn to Section 84 (1) (f) in the aforesaid case decided by the Full Bench. A

perusal of this section which has been quoted in extenso by Jaswant Singh J. clearly excludes the jurisdiction of the civil court in matters with

respect to which any application or proceeding might be instituted in a revenue court and clause (f) clearly includes applications or proceeding

under Section 56 If the Full Bench would have been alive to this specific provision, then it is manifest that it would not have taken the view that it

did. It thus appears that a combined reading of the effect of Section 56 and Section 84 (1) (f) of the Tenancy Act indicates that the statute created

a special class of tenants who were called dispossessed tenants and provided a

special remedy for them to approach the revenue courts for

reinstatement in case they were dispossessed by the landlord* A special remedy having been provided for, the remedy by way of taking recourse

to a civil court was expressly excluded by the provisions of Section 84 (1) (f) of the Tenancy Act as indicated above. This brings me to a

consideration of an earlier case decided by Bhat J. in Smt. Lakhi Vs. Sohan Lal and ors AIR 1965 J&K 56 where in he had held that the moment

a tenant was dispossessed by a landlord, he ceased to be a tenant within the meaning of the Tenancy Act and a suit in a civil court was therefore

not barred. The facts of that case are clearly distinguishable from the facts of the present case as rightly pointed out by Jaswant Singh J.

Furthermore, it would appear that Section 56 (1) creates a special class of tenants, namely, a tenant who is ejected otherwise than in due course

of law and provides that such a tenant may make an application to a revenue officer for reinstatement on the land ' from which he was so ejected

The word 'reinstatement' clearly connotes that for purposes of Section 56 even after the tenant is dispossessed he continues to be a tenant who can

be reinstated in his original position. Thus Section 56 (1) creates a class of dispossessed tenants who continue to hold their original status and the

section confers a statutory right on such persons to get reinstated or relegated to their original position Indeed if we hold that the moment a tenant

is ejected he ceases to be a tenant within the meaning of the Tenancy Act, then the effect of Section 56 (1) would become nugatory, which could

never be the intention of the statute, For these reasons, therefore, the view taken by me in the Full Bench case of Nasib Singh Vs. Bajju Ram

(Supra) regarding the significance of a dispossessed tenant was not correct and stands modified as indicated above.

(3) The question, however, remains that before the case of a tenant is covered by Section 56 (1) of the Tenancy Act, he must be ejected by his

landlord and not by any person other than the landlord In the instant case it is the admitted case of the parties that the tenant was not ejected by his

the then landlord but by the State who acquired the title of the landlord subsequent to the date of ejection. In these circumstances therefore the

tenant in this case could not be said to have been ejected by the landlord himself but by a person other than the landlord, because the point of time

to determine title of the landlord is the time when the tenant has been ejected, as pointed out by Jaswant Singh J. For these reasons I fully agree

with my brother Ishwar Singh J. that since the tenant was not ejected by his landlord, the civil suit was clearly cognizable by a civil court and a

decree was rightly passed by the courts below.