

(2013) 07 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3587 of 1991 (O and M)

Udho Ram and Others

APPELLANT

Vs

The Financial Commissioner (Planning) and Others

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 10A, 16, 6, 9, 9A

Citation : (2013) 07 P&H CK 0060

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Vikas Bahl, for the Appellant; Ranbir Singh Pathania, DAG, Punjab, for the Respondent

Judgement

K. Kannan, J.—The writ petition challenges the order passed by the authorities constituted under the Punjab Security of Land Tenures Act (for short, "the Act"). The petitioners are admittedly tenants to the property from one Biro who had earlier filed a petition for eviction on the ground that they were in arrears of rent and sought for ejectment u/s 9 of the Act. She did not prosecute the petition and allowed it to be dismissed for default. Subsequently, the instant petition which was the subject of adjudication had been filed at the instance of the purchasers from Biro, who claimed that they were themselves small landowners and they were entitled to obtain eviction under the provisions and all the authorities held that the respondents had not shown the landowners to be not small landowners and the benefit of the provision u/s 9 could be availed by the purchasers also. In the writ petition, it is urged that the original landowner Biro herself was a big landowner and a transaction of sale to the subsequent purchaser cannot give them the right by merely stipulating their own status as small landowners. It is also contended that Sections 6 and 16 of the Act subsequently render ineffective the sales so as to affect the rights of tenants. The counsel Mr. Bahl, appearing on behalf of the petitioners, would argue that purchasers cannot secure the benefit u/s 9 of the Act.

2. The authorities have observed that the fact that the original landowner-Biro did not prosecute the petition and allowed it to be dismissed cannot take away the rights of the purchasers. In my view, there is no error in such an observation for a subsequent purchaser gets an independent right and neither the principle of *res judicata* nor Order 9 Rule 9 bar is attracted. The only question is whether the landowners themselves were disqualified from seeking ejectment or the tenants had any particular entitlement to stave off a claim for ejectment.

3. When the landowners themselves declared that they were small landowners and they were not attracted to the provisions of the land ceiling laws, the right cannot be defeated unless the landowners' status as such landowners is denied or is able to show that none of the grounds u/s 9 of the Act is capable of being invoked by the landowners. The counsel's assertion that Biro was a big landowner was not substantiated at all, nor was the status of the purchasers shown as big landowners. The authorities were therefore justified in finding that the petitioners themselves were not disqualified. Even an argument that the petitioners cannot seek for ejectment is not also correct since Section 16 does not invalidate the sale of a landowner. Section 16 only saves the tenants from the effect of mala fide transfers in order that the right of tenant is in any way affected. So long as the transfer is not in respect of surplus land which vests in government, there is no question of a rendering invalid the rights of purchasers. Even the reference to Section 6 of the Act is of no avail for the said Section applies only in respect of transfers made after 1947 and before 02.02.1955.

4. The order of ejectment passed by the authorities was therefore perfectly justified. The Financial Commissioner has modified the order of the Commissioner in so far as he has held that the tenant is not entitled to resettlement u/s 9-A on the ground that one of the subsequent purchaser was a member of the armed forces. The counsel argues that Biro herself was not a person, who was a member of the armed forces. A purchaser cannot claim to such a status to disentitle the tenant for a resettlement in the manner contemplated u/s 9-A of the Act. I uphold this objection, for, a tenant cannot be put to any additional handicap by the effect of transfer. Section 16 of the Act, which we have held as not applicable to invalidate the sale, will still protect a tenant from contending that such a transfer cannot affect his right. If the original landowner could not have disentitled the tenant to secure the benefit of resettlement, the said benefit cannot be taken away at the instance of the purchaser who is a member of the armed forces. Therefore, the order of the Financial Commissioner is modified only to the extent of securing the benefit of 5 standard acres in respect of which he shall not be dispossessed till he is accommodated on the surplus area in accordance with the provisions of Section 10-A of the Act or otherwise of some other mode of transfer by the State Government. This exercise shall be undertaken by the State within a period of 6 months from the date of receipt of copy of this order. The impugned order is modified and the petition is ordered to the above extent only.