

Bhajan Lal

Vs

State of Punjab and Others

Civil Appeal No. 1338 of 1967

(A. N. Grover, J. C. Shah JJ)

25.09.1970

JUDGMENT

SHAH, J. -

Bhajan Lal was the owner of land measuring 21 Bighas, 2 Biswas and bearing Khasra Nos. 11/12, 18, 20 and 43 in village Sukhohan. Shadi was the tenant of the land for agricultural use. Alleging that Shadi had failed to pay the rent due by him for the period Kharif Season 1957 to Rabi Season 1960, Bhajan Lal applied under Section 14-A of the Punjab Security of Land Tenures Act, 1953, to the Assistant Collector for an order in ejectment against Shadi. The application was dismissed by the Assistant Collector and that order was confirmed in appeal by the Collector. The Financial Commissioner set aside the order and remanded the case for a fresh decision by order, dated January 8, 1962.

2. There was yet another proceeding regarding the same lands. On February 20, 1961, Shadi applied to the Assistant Collector to purchase the lands under Section 18 of the Punjab Security of Land Tenures Act, 1953. The Assistant Collector rejected the application. The Collector confirmed that order. By order, dated October 5, 1962, the Financial Commissioner remanded the case for determining whether Shadi was in occupation of the lands for six years before the date of the petition.

3. The Assistant Collector held that Shadi could claim to purchase the lands under Section 18 of the Punjab Security of Land Tenures Act, 1953, on paying Rs. 8,409/- in ten equal instalments to Bhajan Lal. The Assistant Collector held in the proceeding for ejectment started by Bhajan Lal holding that the tenant Shadi had without sufficient cause committed default in paying rent and ordered that he be evicted. The two orders were passed on April 30, 1964. Whereas in the proceeding stated by Bhajan Lal he held that Shadi was liable to be evicted from the lands because he had without sufficient cause committed default in paying rent, in the proceeding filed by Shadi the Assistant Collector declared that Shadi was entitled to purchase the lands from Bhajan Lal. The two orders were challenged respectively by Shadi and Bhajan Lal in revision applications filed before the Additional Commissioner. The Additional Commissioner set aside the order in favour of Shadi and dismissed the application filed by Shadi. In a revision application, the Financial Commissioner set aside the order of ejectment against Shadi and restored the order of the Collector declaring him entitled to purchase the lands.

4. Against the order whereby Shadi was declared entitled to purchase the lands, Bhajan Lal applied to the High Court of Punjab for an order setting aside the order of the Financial Commissioner. The High Court dismissed the petition in limine. Bhajan Lal has appealed to this Court with special

leave.

5. Section 9(1) of the Punjab Security of Land Tenures Act, 1953, provides :

"Notwithstanding anything contained in any other law for the time being in force, no land-owner shall be competent to eject a tenant except when such tenant -

(i) is a tenant on the area reserved under this Act or is a tenant of a small land-owner;
or

(ii) fails to pay rent regularly without sufficient cause; or

(iii) is in arrears of rent at the commencement of this Act; or

(iv) has failed, or fails, without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to the extent customary in the locality in which the land is situate; or

(v) has used, or uses the land comprised in his tenancy in a manner which has rendered, or renders it unfit for the purpose for which he holds it; or

(vi) has sublet the tenancy or part thereof; provided that where only a part of the tenancy has been sublet, the tenant shall be liable to be ejected only from such part;
or

(vii) refuses to execute a Qabuliyat or a Patta; in the form prescribed, in respect of his tenancy on being called upon to do so by an Assistant Collector on an application made to him for this purpose by the land-owner.

Explanation. - For the purpose of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent.

Section 14-A of the Act in so far as it is relevant provides :

"Notwithstanding anything to the contrary contained in any other law for the time being in force and subject to the provisions of Section 9-A, -

(i) a land-owner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First Grade, having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of Section 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in relation to such application,

X X X X##

(ii) a landowner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade, having jurisdiction, who shall thereupon send a notice, in the form prescribed, to the tenant either to deposit the rent or value thereof, if payable in kind, or give proof of having paid it or of the fact

that he is not liable to pay the whole or part of the rent, or of the fact of the landlord's refusal to receive the same or to give a receipt, within the period specified in the notice. X X X"

Section 18 of the Act, in so far as it is relevant, provides :

"(1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a land-owner other than a small land-owner -

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or

(ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous occupation of the land comprised in his tenancy immediately before ejection and immediately after restoration of his tenancy together amounts to six years or more, or

##(iii) X X X##

shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of the land-owner, in the case of a tenant falling within clause (i) or clause (ii) at any time and in the case of a tenant falling within clause (iii) within a period of one year from the date of commencement of this Act :

X X X.###

By virtue of Section 14-A the land-owner may obtain possession of the land on the ground of non-payment of rent by a proceeding filed before the Assistant Collector, during the subsistence of the tenancy. If the tenant has remained in continuous occupation of the land for a minimum period of six years he is entitled to purchase the land under Section 18 of the Act.

6. It was urged that since Section 18 commences with a non-obstante clause, viz. "Notwithstanding anything to the contrary contained in any law, usage or contract", if a proceeding in ejection is lodged against the tenant which ultimately is allowed, the tenant cannot make a claim during the pendency of the proceeding to purchase the land. To hold otherwise, it was urged, would enable a tenant in default to defeat the claim in a suit in ejection by commencing a proceeding for purchasing the land. We do not think that the expression "Notwithstanding anything to the contrary contained in any law, usage or contract" whittles down the right of the tenant at the date when he makes a claim to purchase the land merely because the tenancy is liable to be terminated in a proceeding then pending for an order in ejection under Section 14-A, at the instance of the land-owner. Under the Act, the tenancy does not stand terminated merely because a proceeding in ejection is instituted. The tenancy is determined only in the conditions prescribed by Section 9 and in the manner provided by Section 14-A. If a tenant is in default in payment of rent the land-owner desiring to recover rent due by the tenant may apply in writing to the Assistant Collector who shall thereupon send a notice to the tenant to deposit the rent due or give proof of having paid it. If the tenant fails to pay the rent or give proof of payment, the Assistant Collector shall, after a summary inquiry, if he is of the view that the tenant has not paid or deposited the rent, eject the tenant summarily and put the land-owner in possession of the land concerned. But so long as the Assistant Collector has not passed the order ejecting the tenant the right of the tenant is not extinguished : he continues to remain a tenant and being a tenant he is entitled to exercise his right to purchase the

land.

7. Shadi was a tenant prior to the date of the institution by Bhajan Lal of the proceeding in ejectment and he continued to remain a tenant till an order was passed by the Assistant Collector on April 30, 1964. But before that date Shadi had exercised his right to purchase the land and that right to purchase the land would not be defeated merely because on a date subsequent thereto an order in ejectment was passed against him. Shadi had, therefore, at the date when he initiated proceeding under Section 18 right to purchase the lands. By the subsequent order in ejectment made against him the statutory right of Shadi was not prejudicially affected.

8. We agree with the observations of Mahajan, J., in *Har Sarup and Another v. The Financial Commissioner, Revenue, Punjab* ((1965) 44 Lah LT 157), at p. 159 :

"But, at the time when Section 18 application was filed, no order for eviction had been passed. Therefore, at that time, the relationship of landlord and tenant did exist. Mr. Daulta has not been able to point to me any provision of law which would make the eviction decree operative from the date of the eviction application. The mere fact that the tenants had incurred the liability for eviction by reason of non-payment of rent would not put an end to the admitted relationship of landlord and tenant between the parties. This liability only puts an end to the aforesaid relationship when the eviction decree is passed. The eviction decree was passed long after the Section 18 application. Therefore, the present petition is liable to succeed only to have extent of Section 18 application, that is, the tenants would be entitled to purchase the land.

X X X.###

9. But a slight modification needs to be made in the order. A proceeding for recovery of rent was commenced against Shadi. It is not clear whether the amount of compensation determined by the Assistant Collector as payable by Shadi for purchasing the land includes the rent in arrears. We declare that Shadi will be entitled to purchase the land on payment of the amount of compensation together with the amount of rent due by him. The Assistant Collector will pass appropriate order in that behalf and direct that payment be made in appropriate instalments under Section 18(4)(a).

10. Subject to that modification, the appeal fails and is dismissed with costs.

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