

Dasaudha Singh and Others

Vs

State of Haryana and Others

and

Haryana Co-Op. Multipurpose Society

Vs

Collector of Kaithal

Civil Appeals Nos. 825-831, 956

(A. N. Grover, K. K. Mathew, A. K. Mukherjea JJ)

16.11.1972

JUDGMENT

GROVER, J. -

1. In these appeals by certificate from a judgment of the Punjab and Haryana High Court the main question requiring determination relates to the scope, ambit and true interpretation of Section 7, read with Section 11 of the East Punjab Utilization of Lands Act, 1949, hereinafter called the 'Act'.

2. We need state the facts only in Civil Appeal No. 825 of 1972 (Dasaudha Singh and Others v. State of Haryana). The Collector Karnal leased out an area of 1154 acres in villages Pehowa and Murtzapur jointly to Karnal Co-operative Society Ltd., Pehowa and the Lyalpur Co-operative Joint Farming Society, Murtzapur under Section 5 of the Act. Owing to some dispute which arose subsequent to the lease between the two societies the Registrar gave an award on the matter having been referred to him for arbitration. According to that award the entire land in village Murtzapur and 172 acres of land in village Pehowa were given to the Lyalpur Society and the remaining 357 Acres of land in village Pehowa to the Karnal Society. The lease was originally for a certain number of years but it was extended for a period of twenty years which is the maximum period for which a lease could be granted under the Act. By a notice, dated May 17, 1971, the Sub-Divisional Officer, Kaithal, issued a notice to the lessees under Section 7 of the Act. In the notice it was stated, inter alia, that the original owners had applied for the return of the land leased out as the period of the lease had expired. The lessees were required to handover possession to the original owners. On June 15, 1971, the Sub-Divisional Officer passed an order directing the Tehsildar to take possession of the land and give actual possession thereof to the original owners. These proceedings were challenged in the High Court under Article 226 of the Constitution. The High Court disposed of the writ petition together with the other writ petitions which had been filed on similar grounds by a common judgment dismissing all the petitions.

3. In order to appreciate the points in controversy the relevant provisions of the Act may be referred to as also the background in which the Act came to be enacted. According to the Statement of

Objects and Reasons in the Bill large tracts of fertile land had remained uncultivated due to the negligence or absence of displaced local landlord. The policy of the Government was not to leave any cultivable land unsown as far as possible which was necessary to attain self-sufficiency in the matter of food. If timely action was not taken a large portion of the population would have to face starvation after 1950 when it was proposed to stop all imports of foodgrains from abroad. The Government had tried its best to persuade the landlord to cultivate the lands. There was, however, likelihood of large tracts of fertile and cultivable lands remaining unsown during Rabi 1949-50. The Bill which was introduced was, therefore, aimed at bringing about all available lands in the East Punjab under fodder and foodgrain crops.

4. The definitions of "land", "owner" and "tenant" as given in Section 2 are as follows :

"(e) 'Land' means land which is not urban land and is not occupied as the site of any building in a town or village but does not include land which is leased by Government or Custodian under any law other than this Act.

(f) 'Owner' means a person having a proprietary right in the land and includes an allottee, an usufructuary mortgagee or a lessee.

(h) 'Tenant' means a person to whom land is leased by the Collector under the provisions of this Act."

By virtue of Section 3 the Collector could issue a notice to the owner of any land which had not been cultivated for the specified period and if he did not find the explanation of the land owner to be satisfactory he could take possession of the same for the purpose of the Act. This the Collector could do notwithstanding any law to the contrary. Section 4 provided for payment of compensation where possession of any land had been taken under Section 3. Under Section 5 the Collector, after taking possession under Section 3, could lease out the land to any person on such terms and conditions as he deemed fit for the purpose of growing fodder and food crops. The period of lease could not be less than seven years or more than 20 years. Section 6 conferred power on the Collector to determine lease in certain cases. It may be mentioned that Section 6 was omitted by Punjab Act 11 of 1951 but it was inserted by a later Act No. 24 of 1957. According to sub-section (2) where a lease had been determined by the Collector the lessee was not to be given any compensation. Section 6 was further amended and substituted by Haryana Act 35 of 1971. Owing to certain decision of the Punjab and Haryana High Court it was provided in sub-section (1) that the Collector shall have the power to determine the lease after affording a reasonable opportunity to the tenant to show cause why his lease should not be determined and the possession of the land taken. Sub-sections (3) and (4) were added in these terms :

"(3) The principles embodied in the various provisions of the Transfer of Property Act, 1882, shall not apply to any proceedings under this Act.

(4) No civil or revenue court shall have jurisdiction to entertain any suit or proceedings in respect of the determination of lease or eviction of a tenant."

Sections 7 and 11 are material for our purposes. They are reproduced below :

"7 (1) Where any land taken possession of by the Collector under Section 3 is on the expiry of the lease to be returned to the owner, the Collector may after making such inquiry, if any, as he considers necessary, specify by order in writing the person to

whom possession of the land shall be given.

(2) The delivery of possession of land to the person specified in any order made under sub-section (1) shall be a full discharge of the Collector from all liability in respect of such delivery but shall not prejudice any rights in respect of the land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person to whom possession of any land is to be given cannot be found and has no agent or other person empowered to accept delivery on his behalf, the Collector shall cause a notice declaring that the land is released to be affixed on some conspicuous part of the land.

(4) On issue of the notice referred to in sub-section (3) the land specified in the notice shall be deemed to have been delivered to the person entitled to the possession thereof, and the Government or the Collector shall not be liable for any compensation or other claim in respect of the land for any period after the said date.

11. The Collector may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be reasonably necessary for securing compliance with any order made by him under this Act."

Section 14 provided for appeal and revision by any person aggrieved by an order passed by the Collector. Section 16 empowered the State Government to make rules for carrying out the provisions of the Act. The Punjab Utilization of Land Rules, 1950 were framed in exercise of that power but the Rules dealt only with matters which are not relevant. By Ordinance No. 8 published in the Haryana Government Gazette Extraordinary, dated September 18, 1970, a new Section, Section 14-A was inserted. This section was as follows :

"Bar of jurisdiction. - No civil court shall have jurisdiction to entertain any suit or proceedings in respect of the eviction of any person to whom land has been leased under Section 5."

The aforesaid section has been subsequently omitted by another amendment but it is admitted that during the period under consideration it was in force.

5. The main point which was agitated before the High Court and has been agitated before us on behalf of the appellant is that even on the expiry of the term of the lease no power has been conferred on the Collector under Section 7 to order restoration of possession to the owners. It is submitted that all that Section 7(1) provides is to empower the Collector to make an inquiry and then specify by an order in writing the persons to whom possession of the land is to be given. In other words he can only declare who is to be treated as owner for the purpose of restoration of possession. He cannot further order that there should be a restoration of possession either to him or to the owner. For that purpose resort must be had to the provisions of the Punjab Tenancy Act, 1887 or the general law under which a tenant or a lessee can be evicted after the term of his lease has come to an end. The procedure which is prescribed, according to this argument by sub-section (1) of Section 7, does not relate to the process by which the eviction of the tenant can be effected. There is no question of any automatic or voluntary ejection.

6. Now sub-section (1) of Section 7 is somewhat unhappily worded. On a cursory reading of it an

impression is created that it confers a limited power on the Collector to make an inquiry and declare who the person is to whom the possession of the land is to be restored. But this provision cannot be read in isolation and has to be interpreted in the light of the purpose and scheme of the Act as also the other relevant provisions. There can be no manner of doubt that the sole purpose for which the Act was enacted was to ensure that such lands as were capable of producing food or fodder but which owing to the neglect on the part of the owners were not being cultivated should be utilised for cultivation and for growing food and fodder crops. The condition precedent for applying Section 3 under which the Collector could take possession was that the land should have remained uncultivated for the last six or more harvests. The Collector was to give a lease which was to be for a minimum period of seven years but which could be up to a maximum period of 20 years. This period was obviously prescribed because it was considered that the tenant should have enough period for investing money, putting in his own effort and derive the maximum benefit by cultivating the land leased to him. That served two purposes; firstly it provided an incentive to him to work hard and make full use of cultivation of that land so as to reap as many crops as he could out of it. The second purpose was that by his efforts the land was bound to improve if he was to get benefit out of it. Normally it would be expected that the tenant would not only spend some money of his own on the improvement of the land but he might also effect improvement of a substantial nature, particularly, when the lease was to be for a period of 20 years. He, however, knew before hand that on expiry of the period of the lease, which in all the present cases was for 20 years, he would have to surrender possession to the owner. A printed copy of the lease has been produced before us. It is common ground that all the leases in the present cases were on the same terms as are to be found in this printed lease. According to Clause 7 of the lease the lessee was enjoined to use the land only for the purpose of sowing food and fodder crops and for no other purpose. Clause 8 shows that the lessee was under an obligation to reclaim and bring under cultivation 50 per cent. of the land leased by a particular date and the remaining half by another date. Under Clause 10 he could erect buildings, sink wells, install tube-wells, etc., but it was made quite clear that he had no right to claim compensation for the improvements effected by him nor was he entitled to remove without the previous consent in writing of the Collector any material equipment or machinery attached by him to the land. Clause 11 empowered the Collector to determine the lease and take possession of the land in case of any breach by the lessee of any of the conditions of the lease. Under Clause 8 the lessee was bound on the determination of the lease by efflux of time or otherwise to peaceably vacated and give up possession of the land. Clause 15 made the lease subject to the provisions of the Act as amended from time to time.

7. Apart from the terms of the lease, Section 6 conferred power on the Collector to determine the lease, even before its expiration if the lessee committed a breach of any of the terms or conditions thereof. Section 8 provided for levy of a penalty in case the tenant failed to grow food or fodder crops on the land leased to him. It is thus clear that the Collector was empowered to take possession from the owner only after a maximum period of 20 years for which he could lease it out to a tenant. It was thus clearly contemplated that on the expiry of that period the Collector would restore possession to the owner. The Act nowhere contemplated that the owner should be completely deprived of his ownership rights. The compensation to which he was entitled under Section 4 was for the temporary deprivation of the exercise of ownership rights for the period during which the possession of the land had been taken over by the Collector and given on lease to a tenant. Section 7(1) when read in this context clearly shows that it was intended to empower the Collector to make an order in writing after the expiry of the lease saying that the possession of the land shall be given to the person named or specified in the order. The words "to whom possession of the land shall be given" contained the mandate under which the Collector derived powers of directing that the

possession of the land was to be given by the tenant to the owner whose name was specified in the Collector's order. The compulsory and the summary process by which that order could be enforced is to be found in Section 11. If the tenant did not comply with the order or direction made under Section 7 the Collector could take or cause to be taken such steps or use or cause to be used such force as was necessary for securing compliance with the order made under Section 7(1). Sub-section (2), (3) and (4) reinforce the above interpretation of sub-section (1) of Section 7. Once delivery of possession of the land to the person specified in the order made under sub-section (1) had been effected the Collector stood discharged from all liability in respect of such delivery. Sub-section (3) and (4) were meant for a similar purpose when a person to whom possession of land was to be given could not be found. We are, therefore, unable to accept the contention raised on behalf of the appellants that Section 7, read with Section 11 of the Act did not empower the Collector to make an order which would involve the eviction of the tenant in case he refused to deliver possession to the person specified therein.

8. The contention raised that Section 7 of the Act is violative of Article 14 of the Constitution because there would be two or more remedies available to the authorities to which they can resort is wholly untenable. Section 14-A contained a complete bar to the civil court having any jurisdiction to entertain any suit or proceedings in respect of the eviction of any person to whom land had been leased out under Section 5 of the Act. Sub-section (4) of Section 6 as amended also bars the jurisdiction of any civil or revenue court to entertain any proceedings in respect of the determination of lease or eviction of a tenant. It has been suggested that sub-section (4) of Section 6 is confined only to a case where a lease has been determined by the Collector before its expiry under the provisions of sub-section (1) of Section 6. Sub-section (4) is in general terms and we are unable to see how it can be confined only to a lease determined under sub-section (1) of that section. It appears that it was primarily for this reason that Section 14-A has now been deleted as already mentioned.

9. The next question which has been vehemently argued is whether the provisions of the Tenancy Act are applicable and whether the eviction could take place only under that Act. Reliance has also been placed on the provisions of the Tenancy Act for sustaining the argument that no eviction could take place of the tenant unless compensation had been awarded to him under the provisions of that Act. "Land" has been defined by the Tenancy Act by Section 4(1) to mean, land which is not occupied as the site of any building in town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture and includes the sites of buildings and other structures on such land. "Tenant" has been defined by Section 4(5) to mean a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that other person. Certain categories of persons are not included but we are not concerned with them. Sub-section (6) defines "Landlord" to mean a person under whom a tenant holds land and to whom he is, or but for a special contract would be liable to pay rent for that land. Section 40 gives the grounds of ejectment of tenants for a fixed term and Section 42 places certain restrictions on the ejectment of the tenant. He shall not be ejected otherwise than in execution of a decree, for ejectment except in cases mentioned in clauses (a) and (b) of that Section. Under Section 48 relief against forfeiture can be given in cases mentioned therein to a tenant. Chapter VI deals with improvements by landlords and tenants. Under Section 64 a tenant not having a right of occupancy can make improvements on his tenancy with the assent of his landlord. Where improvements are begun in anticipation of ejectment the tenant cannot claim any compensation by virtue of Section 66. Under Section 67 if a landlord tenders to a tenant a lease of his tenancy for a term of not less than 20 years from the date of the tender at the rent then paid by the tenant or at such other rent as may be agreed on the tender if accepted by the tenant the claim to compensation

in respect of improvements previously made on the tenancy stands barred. Section 68 says that a tenant who has made improvements on his tenancy shall not be ejected until he has received compensation for the improvements made by him. This is, however subject to other sections.

10. As has been noticed already, in the Act the word "tenant" has been defined to mean a person to whom the land is leased by the Collector under the provisions of the Act. The definition of "land" is also different from the one given in the Tenancy Act. There is no definition of landlord at all in the Act. The entire scheme of the Act establishes that it was intended to be exhaustive for the purpose for which it was enacted. It is hardly possible to regard a tenant of the Collector under the Act as falling within the definition of a "tenant" under the Tenancy Act. The whole purpose of the Act would be defeated if the provisions of the Tenancy Act were made applicable to it. If that had been intended there was nothing to stop the Legislature from making a provision in the Act itself about the applicability of the Tenancy Act. The High Court appears to be right in coming to the conclusion that from the provisions of the Act no intention can be attributed to the Legislature of creating a relationship of landlord and tenant between the Collector and the tenant as defined by the Act of the same nature as was provided for by the Tenancy Act.

11. Once the above conclusion is reached the argument based on the provisions of the Tenancy Act with regard to compensation for improvements is bound to fail. As regards the general submission that a person cannot be deprived of his property without payment of compensation it must be remembered that no provision has been made for payment of any compensation for such improvements. The tenants, namely, the appellants had agreed to the term in the lease by which they were bound that they would not claim any compensation for the improvements made by them during the currency of the lease. Moreover when the tenant knew that the lease was for as long a period as 20 years, improvements must have been made with the full knowledge that on the expiry of that period possession would have to be surrendered. The tenants had also reaped all the advantage that they could by having a lease for such a long period. It is true that in the Act itself Section 4 provides for payment of compensation to owners and Section 6 contains a specific clause that where a lease had been determined by the Collector the lessee shall not be entitled to any compensation. Section 7 does not contain any such provision. It is significant that although where the Legislature intended to provide for compensation it did so and where it did not intend to do so it was clearly provided that the tenant shall not be entitled to any compensation. Section 7 is silent on the question of compensation. The Legislature being fully alive to the matter of compensation it would be legitimate to assume that it did not intend to make any provision when possession was to be handed over by the tenant to the original owner pursuant to an order made under Section 7. The reason apparently for not making any provision for compensation one way or the other was that it was clearly contemplated that the tenant would have to give up possession on the expiry of the term of the lease which was for a long period and during which he was expected, as has been observed before, to derive the maximum benefit by means of cultivation of food and foodgrain crops. Since the provisions of the Tenancy Act have been held to be inapplicable to the tenant as defined by the Act we are unable to hold that he was entitled to any compensation before giving up possession in compliance with the order made under Section 7 of the Act.

12. Before the High Court it had been urged on behalf of the appellants that they could be ejected only in accordance with the provisions of the Punjab Security of Land Tenures Act, 1953. The High Court held that owing to Section 21(1) nothing contained in that Act shall affect any land held by a tenant or lessee under the Government. Mr. Dutta who represented some of the appellants before us did not press any argument relating to the applicability of the provisions of the Land Tenures Act to the case of the appellants. At any rate, and this position has been rightly conceded by the counsel for

the respondents, the appellants cannot be debarred from taking benefit of or seeking protection under any enactment if they can establish that they are governed by its provisions.

13. Dr. Singhvi who argued Civil Appeal No. 825 of 1972, has raised some other points in addition to those already disposed of. According to him after the Registrar of Co-operative Societies had settled the dispute between the Karnal Society and the Lyallpur Society letter took no interest in 175 acres of land situate in village Pehowa which had been allotted to it and which were brought under cultivation by the appellants Dasaudha Singh and others. This, it is said, was done with the tacit approval of the Collector. It is, however, admitted that the lease was in favour of the aforesaid societies and the allegation that the appellants brought this land under cultivation with the tacit approval of the Collector contained in para 5 of the writ petition was denied in the written statement filed on behalf of the respondent. In the Jamabandi entries of 1963-64 the entry was as follows :

"The Collector, Karnal, Lessor, Karnal Co-operative Farmers, Karnal, Lyallpur Co-operative Farmers, Karnal in equal shares, lessees. Cultivation Lyallpur Co-operative Farmers, Karnal, through Dasaudha Singh..... tenants-at-will."

It is difficult to understand how the Jamabandi entry helps the appellants at all. It seems to indicate that the persons who were shown as tenants-at-will were cultivating it under the societies which were the lessees. They could not, therefore, claim any better rights than the societies which were the tenants of the Collector and amenable to his jurisdiction under the Act. It may be mentioned that in the High Court this point does not appear to have been argued and we do not have the benefit of any finding of that court on that point. It has, further, been submitted on behalf of the appellants that before any orders were made under Section 7 of the Act the tenants or the persons in occupation of the lands in question should have been given an opportunity of being heard to satisfy the well settled rule of natural justice. Under Section 7 the Collector has to decide and name the owners to whom possession shall be given. The tenant can have not locus standi in that matter in which if there are any rival claimants they alone would be interested. The scheme of Section 7 is such that it is not possible to read into it any requirement of a notice being issued to the tenants before any order is made by the Collector under that section.

14. Before the High Court only in one case, i.e. C.W. 2171 of 1971 it was pointed out that the petitioners therein had purchased 6 acres of land from the original land owner and as such the Collector could not legally dispossess them from that portion of the land. The Additional Advocate-General conceded that in case that area had been purchased by the petitioners in that writ petition they would not be dispossessed and the possession would be restored to them if dispossession had taken place. On behalf of a number of appellants it has been contended that several portions of lands in dispute have been purchased from the original owners and the purchasers are actually in possession. It is not disputed by the counsel for the respondents that if any person has acquired the ownership rights in any of the lands which were the subject-matter of the writ petition he can approach the Collector who will consider his case fully and if it proved that he has become an owner then his possession will not be disturbed and no orders will be made with regard to the area in his occupation or possession under Section 7. This will fully safeguard the interest of those persons who have acquired ownership rights either before or during the pendency of the proceedings in the High Court or even in this Court.

15. Lastly we cannot help observing that the appellants will be put to a good deal of hardship by being asked to give up all lands which they had been cultivating for so many years and which probably are the main source of their livelihood. But that hardship could be alleviated or some relief

given by legislation alone. The court is unable to do anything in the matter.

16. In the result the appeals fail and they are dismissed but there will be no order as to costs.

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