

M/S. Prem Ex-Servicemen Co-Op. Tenant Farming Society Ltd. and Others

Vs.

State of Haryana and Others

M/S. Helwa Ex-Servicemen Co-Op. Tenant Farming Society and Others

Vs.

State of Haryana and Others

M/S. Kamalpur Gitalpur Ex-Servicemen Co-Op. Farming Society Ltd. and Others

Vs.

State of Haryana and Others

Civil Appeals Nos. 1285-1289 of 1972 and Writ Petitions Nos. 829-831 of 1973 and 232-233, 237, 221 and 238 of 1972

(M. H. Beg, A. Alagiriswami, Y. V. Chandrachud JJ)

11.04.1974

JUDGMENT

BEG, J. -

1. There is a batch of five Civil Appeals by Special leave and another of eight Writ Petitions by ex-Servicemen Co-operative (Tenants) Farming Societies before us raising common questions of fact and law so that they can be disposed of by a single judgment.
2. The Civil Appeals are filed against the orders of the Collector, Kaithal, dated April 25, 1972, directing that an area of 230 acres of land assumed to have been leased to the members of the appellant Societies under the East Punjab Utilization of Lands Act, 1949, (hereinafter referred to as 'the Act'), in 1952, for 20 years, should be handed over to the rightful owners by the Pattedars as the period of their leases has expired. A preliminary objection to the maintainability of the appeals under Article 136 of the Constitution against the orders of the Collector is not substantiated by citing any authority of this Court. Moreover, there are also Writ Petitions under Art. 32 of the Constitution questioning the power of the Collector to deprive the petitioners of their alleged fundamental right to hold land in their possession until dispossessed in accordance with law. We, therefore, overrule this technical objection.
3. Apparently, the Collector's orders were made on the assumption that the High Court of Punjab and Haryana had already decided that Pattas were given to the members of the tenants Societies under the Act and that the ownership of certain persons over the lands leased to the members of the appellant Societies was established and was subsisting at the time of the order. We have not been shown any judgment of any court where these questions have been canvassed and determined. All that the learned Counsel for the Respondent State could submit is that, from certain statements made

on behalf of Co-operative Societies, it should be inferred that Pattas were given in 1952 under the Act to the members of these Societies because they expired 20 years afterwards in 1972 which was the maximum period for which leases could be granted under Section 5 of the Act. It may be that the members of the Co-operative Societies had made some admissions the nature and effect of which require examination. It is well settled that the effect of an alleged admission depends upon the circumstances in which it was made. We are unable to go into these questions until they have been fully and properly investigated by an authority empowered to consider them.

4. It appears that no leases were produced by anybody before the Collector or anywhere else. This distinguishes the present case from the case of *Dasaudha Singh v. State of Haryana*; and *Haryana Co-op. Multipurpose Society v. Collector of Kaithal* (AIR 1973 SC 710 : (1973) 2 SCC 393), relied upon on behalf of the Respondent State, where there was no disputed question about the enactment under which the admitted leases were given. The peculiar feature of each case before us, whether under appeal or on a Writ Petition, is that there is no Patta or lease forthcoming. It is denied by the appellants and by the petitioners in each case that either the land was given to them under the East Punjab Land Utilization Act or that the alleged owners to whom the land was directed to be handed over have any right or title left at all even if they had any at any time.

5. Moreover, an affidavit has been filed on behalf of the State of Haryana showing that a gooddeal of land in dispute vests in the Gram Sabhas or Panchayats. If this is so, it is difficult for us to understand how an order could be made for the handing over of the possession of this land to the assumed private owners who are named in the order.

6. After having been taken through the provisions of the Act, we find that the provisions for eviction could only apply to case where it is clear or there is no dispute that the person to be evicted was a lessee under Section 5 of the Act. In the instant case, the learned Counsel for the alleged lessees points out that there were a number of enactments under which the land could be given. They were said to be : Colonization of Government Lands Act, 1912; the East Punjab Displaced Persons Resettlement Act, 1949; East Punjab Reclamation of Land Act, 1941; and, the Security of Land Tenures Act, 1953. Certain rules were also said to have been made in 1897 for utilization of waste land in Punjab. It was not clear under which provision the land was allotted to the alleged lessees. Hence, at the very threshold, the power of the Collector to proceed under the Act is challenged. It is true that the Act does not give power to the Collector to adjudicate on questions of right and title where these properly and really arise. Nevertheless, the Collector, when proceeding to take steps under the Act, must determine the source and extent of his power and jurisdiction, where these are questioned, so as to decide whether the Act relied upon by a party before him could be applied at all. This is a question on which there are conflicting assertions and pieces of evidence which seem difficult to reconcile with each other. Hence, we think that these are fit cases in which the Collector may himself go into the following questions before passing any further orders :

1. Was the possession of any of the lands in dispute taken by the State Government under the Utilization of Lands Act and Pattas duly executed under Section 5 of the Act in favour of the alleged lessees ?

2. Were any proceedings for awarding compensation under Section 4 of the Act taken in respect of the land alleged to have been leased, and, if so, on what basis were basis were the persons dispossessed compensated ? In other words, are there grounds to believe that the persons to whom the lands were directed to be handed over were no longer owners ?

3. If no legally valid leases were executed in favour of the alleged lessees, what could be their legal status and rights by reason of long possession ?

4. What was the nature of the claims to any land put forward by the Gaon Panchayats ?

5. Is this a case in which the Collector can interfere or pass any order under any provision of law or should the matter be left to be decided between the alleged lessees, the alleged private owners, and the Panchayats by such other legal proceedings as may be open to them for the purpose of getting their claims adjudicated upon ?

7. The result is that we allow the appeals and Writ Petitions before us and quash the orders of the Collector directing dispossession of the appellants and the petitioners from the lands occupied by them, and we order that no further proceedings under the Act be taken against the alleged lessees so long as it is not decided that the lands in their possession are still governed by the provisions of the Act relied upon. In the circumstances of the case, the parties will bear their own costs.

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