

Moola

Vs

Financial Commissioner, Revenue, Chandigarh and Others,

Civil Appeal No. 2556 of 1980

(D. A. Desai, E. S. Venkateramiah JJ)

26.09.1980

JUDGMENT

DESAI, J. –

1. Special leave to appeal granted.

2. Appellant Moola filed a suit under Section 5 of the Punjab Tenancy Act in the Court of Assistant Collector, Hissar, for acquisition of occupancy rights. Third respondent Lorinda Ram, a displaced person was the allottee of the and in respect of which Moola claimed occupancy rights. When the matter reached the High Court, the learned single Judge of the High Court relying upon Section 9 of the Displaced Persons (Land Resettlement) Act, 1947, held that even of the appellant Moola was on the land since the time of his forefathers, the lease is deemed to have been terminated effective from July 21, 1949, because there is nothing to show that the lease in question was exempted by the Custodian from the operation of Section 9. With this observation, the writ petition of the appellant was dismissed and this order was affirmed by a Division Bench in Letter Patent Appeal 150 of 1979.

3. Learned counsel for the appellant here pointed out that the appellant's lease is protected under Section 12 of the Administration of Evacuees Property Act, 1950. Section 12 reads as under :

12. Power to vary or cancel leases or allotments of evacuee property. -

(1) Notwithstanding anything contained in any other law for the time being in force, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or arrangement under which any evacuee property is held or occupied by a person, whether such allotment, lease or arrangement was granted or entered into before or after the commencement of this Act :

Provided that in the case of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee -

(a) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him; or

(b) has used or is using such property for the purpose other than that for which it was leased to him; or

(c) has failed to pay rent in accordance with the terms of the lease.

Explanation. - In this sub-section "lease" includes a lease granted by the Custodian and "agreement" included an agreement entered into by the Custodian.

(2) Where by reason of any action taken under sub-section (1) any person has ceased to be entitled to possession of any evacuee property, he shall on demand by the Custodian surrender possession of such property, to the Custodian or to any person duly authorised by him in this behalf.

(3) If any person fails to surrender possession of any property on demand under sub-section (2), the Custodian may notwithstanding to the contrary contained in any other law for the time being in force, eject such person and take possession of such property in the manner provided in Section 9.

4. It clearly transpires from the proviso that if the lease in favour of a lessee was from a date prior to August 14, 1947, the Custodian will have no power to cancel the lease and Section 9 of the 1947 Act would not automatically cancel the lease. Appellant states that he is on the land from the time of his forefathers.

5. The High Court while rejecting the writ petition of the appellant completely overlooked Section 12 of the Administration of Evacuee Property Act, 1950. In order to appreciate the impact of Section 12 it would be necessary to examine and ascertain whether the appellant was on the land since prior to August 14, 1947, and if he was, in what capacity he held the land has also to be examined. Unfortunately, these aspects are not examined and investigated by the High Court. Learned counsel for the appellant wanted us to look into the extracts of some of the revenue records showing that the grandfather of the appellant was on the land in question and on the death of the grandfather the father of the appellant was the lessee and the lease was inherited by the appellant. We do not propose to examine this contention and we do not express any opinion on this point but we feel that this aspect and the connected aspect must be examined by the High Court.

6. We accordingly set aside the judgment of the learned single Judge of the High Court well as the decision of the Division Bench in letters patent appeal and remit the case to the High Court with a direction that the writ petition may be readmitted and the two contentions of the appellant, viz., (i) whether the appellant or any of his forefathers was on the land as lessee since prior to and till August 14, 1947; (ii) if yes, what is the effect of Section 12 of the Administration of Evacuee Property Act, 1950, as also Section 9 of the Displaced Persons (Land Resettlement) Act, 1947 on his right to continue in possession and acquire occupancy rights. In accordance with the findings on these points the High Court may dispose of the writ petition of the appellant. As the matter is an old one, we hope that it will be disposed of as expeditiously as possible. There will be no order as to costs of proceeding till and inclusive of present appeal.

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