

Dina

Vs

Financial Commissioner, Punjab, Chandigarh and Others.

Civil Appeal No. 1108 of 1982

(K. Ramaswamy, B. N. Kirpal, Faizanuddin JJ)

05.12.1995

ORDER

1. By order dated 28-7-1992, a Bench of two Judges referred the matter to a Bench of three Judges doubting the correctness of the decision in *Bhartu v. Randhir Singh*. The admitted facts are that the appellant-tenant was sought to be ejected by petition dated 29-1-1966 from 47 bighas 13 biswas situated in Village Burj Baghelsinghwal, District Sangrur on the ground that the period of three years of the lease had expired by that date and that, therefore, he was liable to be ejected. The Assistant Collector Grade I by order dated 30-7-1966 ordered ejection of the appellant under Section 8 of the Pepsu Tenancy and Agricultural Lands Act as amended by Act No. 15 of 1956, (for short "the Amendment act"). It was confirmed on appeal. When it was questioned in writ petition, the learned Single Judge following the Full Bench decision of the High Court in *Piara Singh v. Financial Commr., Revenue* held that after expiry of three years, under Section 8 the appellant is liable to ejection. Thus this appeal by special leave.

2. The only question is whether the landlord, after expiry of three years' lease gets right of ejection of a tenant, under Section 8 without recourse to the provisions of Sections 7 and 7-A of the Act. Sections 7, 7-A and 8 of the Act read as under :

"7. Termination of tenancy. - (1) No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds, namely :

(a) (Omitted by Pepsu Act No. 15 of 1956.)

(b) that the tenant has failed to pay rent within a period of six months after it falls due :

Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejection and he has failed to pay such arrears during that period;

(c) that the tenant, not being a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity, has after commencement of the President's Act, sub-let without the consent in writing of the landowner, the land comprising his tenancy or any part thereof;

(d) that the tenant has, without sufficient cause, failed to cultivate personally such land, in the manner and to the extent customary in the locality in which such land is situated;

(e) that the tenant has used such land or any part thereof in a manner which is likely to render that land unfit for the purpose for which it was leased to him;

(f) that the tenant, on demand in writing by the landowner has refused to execute a Kabuliyat agreeing to pay rent in respect of his tenancy in accordance with the provisions of Sections 9 and 10.

7. (2) (Omitted by Pepsu Act No. 15 of 1956.)

7-A. Additional ground for termination of tenancy in certain cases. - (1) Subject to the provisions of sub-sections (2) and (3), a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 may be terminated on the following grounds in addition to the grounds specified in Section 7, namely :

(a) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter II;

(b) that the landowner owns thirty standard acres or less of land and the land falls within his permissible limit :

Provided that no tenant other than a tenant of a landowner who is member of the Armed Forces of the Union shall be ejected under this sub-section -

(i) from any area of land, if the area under the personal cultivation of the tenant does not exceed five standard acres, or

(ii) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standard acres,

until he is allotted by the State Government alternative land of equivalent value in standard acres.

(2) No tenant, who immediately preceding the commencement of the President's Act has held any land continuously for a period of twelve years or more under the same landowner or his predecessor in title, shall be ejected on the grounds specified in sub-section (1) -

(a) from any area of land, if the area under the personal cultivation of the tenant does not exceed fifteen standard acres, or

(b) from any area of fifteen standard acres, if the area under the personal cultivation of the tenant exceeds fifteen standard acres :

Provided that nothing in this sub-section shall apply to the tenant of a landowner who, both, at the commencement of the tenancy and the commencement of the

President's Act, was a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity.

Explanation. - In computing the period of twelve years, the period during which any land has been held under the same landowner or his predecessor-in-title by the father, brother or son of the tenant shall be included.

(3) For the purpose of computing under sub-sections (1) and (2) the area of land under the personal cultivation of a tenant, any are of land owned by the tenant and under his personal cultivation shall be included.

8. Security of tenure to certain tenants. - Subject to the provisions of Section 7, every tenant admitted after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, shall hold land for a minimum term of three years :

Provided that nothing herein shall apply to the tenant of a person who is a widow, a minor, an unmarried woman, member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity."

3. The contention of Mr. H. K. Puri, learned counsel for the appellant is that Section 8, in the light of the Statement of Objects and Reasons for introducing the Amendment Act, gives protection of minimum tenure to the tenant. If the landlord seeks ejectment of the tenant, necessarily, he has to fall back upon satisfying conditions enumerated in Sections 7 and 7-A. On expiry of three years, the tenant is not automatically liable to be ejected, unless he commits any one of the contraventions mentioned in Section 7 or the landlord requires the land as enumerated in Section 7-A of the Act. Shri Dua, the learned counsel appearing for the landlord contended that the object of the Amendment Act is not only to give protection to the tenant and small landholders to argument their holding but also to give right to the small tenure-holders to have the tenant ejected irrespective of applicability of all or any of the provisions enumerated in Section 7 or Section 7-A of the Act. The question, therefore, is whether the interpretation given to Sections 7, 7-A and 8 by this Court is correct in law.

4. The objects and reasons have been enumerated thus :

"The necessity for introducing certain agrarian reforms, particularly with a view to protecting the tenants against eviction and fixing for allottees a higher limit for reservation of land for personal cultivation, was being felt for sometime past. This Bill seeks to achieve the object by amending the Pepsu Tenancy and Agricultural Lands Act, 1955."

5. The object and reasons enumerates twin purposes, namely, to give minimum period of tenancy and to protect the tenants against unreasonable eviction and fix for allottees a higher limit for reservation of land for personal cultivation. These objects were sought to be achieved by Section 8 and Section 7-A respectively. Section 8 accords solitary protection to the tenant of minimum tenure of three years. It says that subject to the provisions of Section 7, every tenant admitted after the commencement of the Pepsu Tenancy and Agricultural Lands Act, (Second Amendment) Bill, 1956, shall hold land for a minimum term of three years. The other part of the provision is not necessary

for the purpose of this case and so we need not again produce it. The object, thereby, clearly indicates that the tenant shall hold the land for a minimum term of three years but such holding should be subject to his abiding the provisions of Section 7 which enumerates diverse conditions subject to which tenancy may be terminated by the landlord. As seen, Section 7-A gives additional grounds to terminate the tenancy in the cases enumerated thereunder. We are not concerned with the effect of the provisions contained in Section 7-A.

6. It was contended in the High Court that despite the contravention of any one or all the grounds provided in Section 7, a tenant is entitled to remain in a fixed tenure for three years which was rightly rejected. It does not appear to be a correct reading of Section 8. Though Section 8 gives right to the tenant of the fixity of tenure of minimum three years, it would be subject to the conditions enumerated in Section 7. If a tenant commits any one or some or all the contraventions enumerated in Section 7, despite the fact that Section 8 guarantees minimum term of three years, he is liable to be ejected. In other words, though minimum three years' tenancy right is protected, it casts corresponding duty on the tenant to abide by law mentioned in Section 7. Equally landlord is entitled to avail of the benefit under Section 7-A to have the tenant ejected. Otherwise, as stated by this Court in Bhartu case, a tenant may cause damage to the demised land and yet remain in occupation of the land for three years which is inconsistent with the object of Sections 7 and 8. This Court in Bhartu case considered the effect of it and held that the tenant is liable to comply with the provisions of Section 7. To that extent, we are in respectful agreement with the ratio in Bhartu case. But on expiry of three years' tenure, a tenant is not automatically liable to be ejected merely because the landlord happens to hold lesser holding or on any other ground. The tenant would be liable to ejectment only when one or some or all the conditions mentioned in Section 7 or Section 7-A are proved by the landlord to the satisfaction of the competent authority/officer. If the landlord wants to avail of the right under Section 7-A, he necessarily has to prove compliance of the conditions enumerated in Section 7-A and have the tenant ejected on proof of the grounds enumerated therein. Accordingly, we are of the considered view that de hors Sections 7 and 7-A, Section 8 does not give any independent right to the landlord to have the tenant ejected on mere expiry of three years' term mentioned in Section 8.

7. We are of the considered view that law was not correctly laid down in Bhartu case and by the majority in Piara Singh case.

8. The appeal is accordingly allowed. The orders of the tribunals below directing ejectment of the appellant is set aside. The writ petition stands allowed and the rule nisi is made absolute. But, in the circumstances, parties are directed to bear their own costs.