

# SUPREME COURT OF INDIA

Dharam Kaur

Vs.

Mukhtiar Singh

(Ruma Pal, S. V.Patil and K.G. Balakrishnan JJ.)

31.01.2001

## ORDER

1. The appellant purchased certain land from one Bihari. The respondent claiming to be a tenant under Bihari filed a suit against the appellant seeking pre-emption in respect of a portion of the said land under the *Punjab Pre-emption Act, 1913*. The suit was decreed in favour of the respondent. The appellant's appeal was dismissed. This appeal has been preferred from the rejection of the appellant's second appeal by which the High Court affirmed the First Appellate Court's decision.

2. Section 4 of the 1913 Act provides for the procedure for claiming a right of pre-emption. According to the appellant, the substantive right of pre-emption has been provided in the *Punjab Security of Land Tenures Act, 1953*, Section 17 of which reads;

“17. Right of certain tenants to pre-empt sale etc. of land - Notwithstanding anything to the contrary contained in any law, usage or contract, and subject to the provisions of Section 18, a tenant of a landowner other than a small landowner,

(i) who has been in continuous occupation of the land comprised in his tenancy for a period exceeding four years on the date of the sale of the land or foreclosure of the right to redeem the land, or

(ii) in case of a sale or foreclosure that has taken place or shall take place within a period of three years from the commencement of this Act and there is no tenant who has acquired a right under Clause (i)-

(a) who was ejected from tenancy after the 14th day of August, 1947, and before the commencement of this Act on grounds other than those mentioned in Section 9 and was in continuous occupation of the land comprised in his tenancy for a period exceeding four years on the date of his ejection, or

(b) who has been restored to his tenancy under the provisions of this Act and whose period of continuous occupation of the land comprised in his tenancy immediately

before ejection and immediately after restoration of his tenancy together exceeds four years.

shall, in preference to the rights of other preemptors as provided in the *Punjab Preemption Act, 1913* (Act 1 of 1913), except the descendants of vendor's grandfather, be entitled to pre-empt the sale or foreclosure of the land other than the land comprised in the reserved area of the landowner in the manner prescribed in that Act within one year from the date of sale or foreclosure, as the case may be:

Provided that no tenant referred to in this Sub-section shall be entitled to exercise any such right in respect of the land or any portion thereof, if he had sublet the land or the portion, as the case may be, to any other person unless during that period the tenant was suffering from a legal disability or physical infirmity, or, if a woman, was a widow or was unmarried.”

3. There is no dispute that the right of preemption was claimed by the respondent as a tenant. It is the submission of the appellant that neither in the plaint nor in any of the decisions of the courts' below was this aspect of the matter considered, namely whether the respondent had fulfilled the conditions subject to which a tenant could claim a right of pre-emption. However, neither the applicability of the Punjab Security of Land Tenures Act, 1953 nor the non-fulfillment by the respondent of the conditions under Section 17 had been raised by the appellant before any of the courts. The only issue raised was whether the respondent was a tenant in respect of the land in dispute. The trial court, the First Appellate Court as well as the High Court in second appeal have found that the respondent has been able to establish his right as a tenant in respect of the said land. The issue now sought to be raised by the appellant is a mixed question of fact and law. Not having raised the issue before the courts below, the appellant is precluded from agitating the matter before us at this stage.

4. The second aspect sought to be agitated by the appellant is that the courts had rested their finding as regards tenancy of the respondent only on the production of khasra girdwari by the respondent which showed that the respondent was in possession of the land in dispute as a tenant. He has relied upon the decision in *Nantha Singh and Ors. v. The Financial Commissioner, Taxation, Punjab and Ors.* to contend that mere production of khasra girdwari was insufficient in the absence of proof of payment of rent. In that case, there was no evidence of a contract of tenancy or of payment of rent. In the case before us, on the other hand, all the courts have concurrently found as a matter of fact that rent had been paid by respondent No. 1 to his landlord. It may be that the respondent was unable to produce any rent receipt. Nevertheless, on an assessment of the evidence including the evidence given by the respondent No. 1 and other witnesses on oath, a firm conclusion was arrived at that the respondent had occupied the land as a tenant on payment of rent to the landlord.

5. In the circumstances, we see no reason to interfere with the judgment under appeal. Accordingly, it is dismissed without any order as to costs.