SUPREME COURT OF INDIA

Tara Chand & Ors.

Vs.

Gram Panchayat Jhupa Khurd & Ors.

C.A.No.8845-8850of2003

(B.S. Chauhan and Fakkir Mohamed Ibrahim Kalifulla,JJ.)

6.11.2012

JUDGMENT

B. S. Chauhan,J.

1. These appeals have been preferred against the judgments and orders dated 18.9.2002, passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition Nos.13985 to 13990 of 2001, by way of which, the High Court has dismissed the said writ petitions, concurring with the judgment and order of the Financial Commissioner dated 29.11.2000, by which while allowing the Revision Petition filed by the respondent-Gram Panchayat, claims of the appellants for occupancy rights in the land in dispute were rejected.

2. The facts and circumstances giving rise to these appeals are as follows:

> "A. The appellants/their predecessors-in-interest had been in cultivatory possession of the land in dispute, measuring 78 kanal 5 marlas situated in the village of Jhupa Khurd, Tehsil Loharu Distt. Bhiwani, prior to 1935-36. Until the year 1954, the said land was recorded as Shamilat deh in the revenue records. In the cultivation column, the appellants/their predecessors-in-interest were shown as co- sharers. The appellants/their predecessors-in-interest, filed a suit on 4.7.1989 in the Court of the Assistant Collector, First Grade Loharu, District Bhiwani, Haryana for declaration of their occupancy rights, under Sections 5 and 8 of the Punjab Tenancy Act, 1887 (hereinafter referred to as, the Tenancy Act) in relation to the land in dispute. The suit was contested by the State, as well as by the Gram Panchayat and after the conclusion of the trial, the same stood as dismissed, vide judgment and order dated 28.8.1992.
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> B. Aggrieved, the appellants/their predecessors-in-interest preferred an appeal before the District Collector, which was allowed vide order dated 28.6.1993, by way of which the appellate authority set aside the judgment and order of the Assistant Collector, and remanded back the case so that the same could be decided afresh.

C. The Court of First Instance, i.e. the Assistant Collector, after remand, allowed the case vide judgment and order dated 18.11.1993, observing :

> "Plaintiff has paid the rent to the Gram Panchayat from time to time and when the Panchayat refused to take the rent the same was deposited in the court, on courts order. Receipts of which are on the file. The plaintiff has been paying the nominal rent since before 12 years before the commencement of Punjab village common lands Act,1961and therefore there is relationship between the parties as land lord and tenant. It was further held that, as the appellants/plaintiffs fulfilled all the conditions of Sections 5 and 8 of the Tenancy Act, owing to the fact that they had been in uninterrupted possession of the land for a very long time and had also been cultivating the said land continuously, paying nominal rent to the Gram Panchayat, much before the commencement of the Punjab Village Common Lands (Regulation)Act, 1961, (hereinafter referred to as Act 1961), and hence, the provisions of Section 7 of the Act 1961 were not attracted and that they were, therefore, in fact entitled to the declaration as sought by them."

D. Aggrieved, the Gram Panchayat-defendant, filed an appeal before the District Collector, Bhiwani, which was allowed vide judgment and order dated 26.2.1996, taking into consideration the fact that the Predecessors-in-interest of the appellants, were in possession of the land for a period of more than 60 years upon the payment of nominal rent of 34 paise, however, the disputed land was always shown as shamilat deh, and all revenue records showed the status of the appellants/their predecessors-in-interest as co-sharers, owing to which, they could not be termed as tenants. To create a relationship of tenancy, there must be an agreement between the parties, which was not in existence in the instant case. The possession of the appellants as regards the land in dispute, remained unauthorised and illegal and thus, they could not claim occupancy rights. In the event that the land was in illegal possession of any person, prior to the commencement of the Act, 1961, the same would be deemed to be illegal, and no occupancy rights over it would be allowed.

E. The appellants/their predecessors-in-interest filed an appeal against the said order, before the Divisional Commissioner, Hisar. The Divisional Commissioner, while deciding further appeals vide judgment and order dated 22.8.1996, held that the predecessors-in- interest of the appellants, had been in cultivatory possession of the land before 1935-1936 as share holders/joint owners, upon the payment of nominal rent. As the appellants had been in cultivatory possession for more than 12 years, from the date of commencement of the Act 1961, without the payment of rent, or by payment of charges not exceeding the land revenue and cesses payable thereon, thus in view of the provisions of Section 4(3)(ii) of the Act, 1961, it cannot now, make any distinction between a tenant or co-owner of the shamilat deh and therefore, the

right of occupancy would be available to the tenants, as well as to the co-sharers for the reason that co-sharers must have a superior claim as compared to that of a tenant.

F. The said judgment dated 22.8.1996 was challenged by the respondent-Gram Panchayat by filing a revision application before the Financial Commissioner of the State of Haryana. The Financial Commissioner vide its judgment and order dated 29.11.2000, held that the provisions of 4(3)(ii) of the Act, l961 which provide that the rights of persons who have been in continuous cultivatory possession of shamilat deh, for a period of more than 12 years from the date of commencement of the said Act, without payment of rent, or upon payment of nominal rent, were not applicable as the appellants were recorded in the revenue record, as joint owners, to whom the land was never leased out by the Gram Panchayat, and thus, the provisions of the Act 1961 were not attracted, and as it is a settled legal proposition that occupancy rights cannot be acquired in shamilat deh by a joint-owner, the revision was accepted.

G. Aggrieved, the appellants challenged the said judgment and order dated 29.11.2000, by filing writ petitions which have been dismissed by the impugned judgments and orders. The High Court held that the expression, any person contained in Section 8 of the Tenancy Act, referred only to the person mentioned in Section 5, which was a tenant. This section only provides that any person can establish a right of occupancy on any ground other than the ones specified in Section 5, and that as the appellants had never been tenants, the question of granting them occupancy rights could, therefore, not arise. The relationship of a landlord and tenant could not exist between the parties. The appellants had been joint-owners prior to the year 1953. Till date, the revenue record depicts them as joint- owners. Section 10 of the Tenancy Act puts an embargo on joint-owners to claim occupancy rights. ence, these present appeals."

3.Shri Amrendra Sharan, learned Senior counsel appearing for the appellants, has submitted that the suit was filed under Sections 5 and 8 of the Tenancy Act and that, as the appellants were tenants, they were entitled to declaration of their occupancy rights as regards the land in dispute. Even otherwise, Section 8 of the Tenancy Act enables the appellants to attain the said declaration. The statutory authorities committed a grave error in holding that the appellants were joint-owners in the shamilat deh, and not tenants. Therefore, the present appeals deserve to be allowed.

4. Per contra, Shri Manjit Singh, learned AAG appearing for the respondents, has vehemently opposed the appeals contending that the appellants/their predecessors-in-interest were in cultivatory possession of the land as joint-owners/hisedars (village proprietors), prior to 1935-36, and continued to be so, as per the revenue records even after the year 1954. Moreover, the appellants have claimed occupancy rights as provided under Section 2(f) of the

Punjab Occupancy Tara Chand & Ors vs Gram Panchayat Jhupa Khurd & Ors on 6 November, 2012 Tenants (Vesting of Proprietary Rights) Act, 1952, (hereinafter referred to as the Act, 1952) and therefore, they cannot be allowed to claim any benefit under the provisions of Sections 5 and 8 of the Tenancy Act. They can claim relief only under Section 11 of the Act 1961. The suit under the Tenancy Act itself, is not maintainable and the present appeals are therefore, liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record. Relevant statutory provisions applicable in the case.

(a) The Tenancy Act :

"Tenants having right of occupancy. (1) A tenant

(a) who at the commencement of this Act has for more than two generations in the male line of descent through a grandfather or grand-uncle and for a period of not less than twenty years, been occupying land paying no rent therefore beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon; or (2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefore beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he had fulfilled the conditions of clause (a) of sub-section (1).Establishment of right of occupancy on grounds other than those expressly stated in Act - Nothing in the foregoing sections of this Chapter shall preclude any person from establishing a right of occupancy on any ground other than the grounds specified in those sections.Rights of occupancy not to be acquired by joint owner in land held in joint ownership In the absence of a custom to the contrary, no one of several joint owners of land shall acquire a right of occupancy under the Chapter in land jointly owned by them.

(b) The Act 1952:

6. Section 2(f) of the Act, 1952 defines Occupancy Tenancy as under:-

"occupancy tenant means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and Tara Chand & Ors vs Gram Panchayat Jhupa Khurd & Ors on 6 November, 2012 successors in interest of an occupancy tenant. Section 3- Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords:-

(a) all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force and including the share in the

Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord.

(b) Act 1961:

Section 4 -Vesting of rights in Panchayats and Non-Proprietors: xx xx xx xx (3)(ii) rights of persons in cultivating possession of Shamilat deh, for more than twelve years [immediately preceding the commencement of this Act] [Inserted by the Punjab Act No.19 of 1976, Section 3] without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.
xx xx xx

7.Power to put panchayat in possession of Shamilat deh- (1) The collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the state government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the Shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to execution of a decree for possession of land under the Punjab Tenancy Act,1887. Section 11 Decision of claims of right, title or interest in Shamilat Deh - (1) [Any person or a Panchayat] [Substituted by Act No. 25 of 1993] claiming right, title or interest in any land vested or deemed to have been vested in a Panchayat under this Act, or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time as may be prescribed, statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed. xx xx xx xxIt has been canvassed on behalf of the appellants that Section 8 of the Tenancy Act contains the expression, any person and not, the tenant. Therefore, the expression any person cannot be restricted to mean a tenant, for the reason that had this been Tara Chand & Ors vs Gram Panchayat Jhupa Khurd & Ors on 6 November, 2012 the intention of the legislature, the expression tenant itself could have been used under Section 8. Therefore, all together, a different meaning is to be given to the said expression.

8. This Court in Kailash Nath Agarwal & Ors. v. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. & Anr., AIR 2003 SC 1886, held that :

"As a general rule when two different words are used by a statute, prima facie one has to construe different words as carrying different meanings. But sometimes two different words are used in one and the same statute to convey the same meaning, but that is exception rather than the rule (See also: Tej Mohammed Hussainkhan Pathan v. V.J. Raghuvanshi & Anr. AIR 1993 SC 365; Bipin Chandra Parshottamdas Patel v. State of Gujarat (2003) 4 SCC 642; D.L.F Qutab Enclave Complex Educational

Charitable Trust v. State of Haryana (2003) 5 SCC 622; and K.S.L Industries Ltd. v. Arihant Threads Ltd. & Ors. (2008) 9 SCC 763).

9. In Pallawi Resources Ltd. v. Protos Engineering Company Pvt. Ltd., (2010) 5 SCC 196, it was held by this Court:

> "Further, it is a well established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature in a certain manner, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner."

10. In Grasim Industries Ltd. v. Collector of Customs, Bombay AIR 2002 SC 1706, this court observed That different expressions like 'similar' and 'other' have not been used without any basis. No words or expressions used in any statute can be said to be redundant or superfluous. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sentential legis of the legislature. Where the words arc clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided.

11. The word, any person has to be understood in the context that was intended by the legislature with respect to the tenancy Act, keeping in mind the purpose for which, the statute was enacted. The provisions of the Act, thus, have to be construed to achieve the purpose of its enactment. The Court has to adopt a constructive approach not contrary to attempted objective of the enactment. The Court must examine and give meaning to the said words, in view of the statute of which it is a part, considering the context and the subject of the said statute. (Vide: Shri Balaganesan Metal v. M.N. Shanmugham Chetty & Ors., AIR 1987 SC 1668; and Sahakari Sakhar Karkhana Ltd. v. Collector of Central Excise, Pune, (2003) 3 SCC 506).

12. In Union of India & Ors v. Brigadier P.S Gill, (2012) 4 SCC 497, this Court following its earlier decisions held:

> "Every clause of a statute is to be construed with reference to the context and other provisions of the Act to make a consistent and harmonious meaning of the statute relating to the subject-matter. The interpretation of the words will be by looking at the context, the collocation of the words and the object of the words relating to the mattes..It is an elementary rule of construction that no provision of a statute should be

construed in isolation but it should be construed with reference to the context and in the light of other provisions of the Statute so as, as far as possible, to make a consistent enactment of the whole statute... (See also: Sri Ram Saha v. State of West Bengal (2004) 11 SCC 497; Central Bank of India v. State of Kerala (2009) 4 SCC 94; Offshore Holdings Pvt. Ltd. v. Bangalore Development Authority & Ors. (2011) 3 SCC 139; Afjal Imam v. State of Bihar (2011) 5 SCC 729; Head Master, Lawrence School, Lovedale v. Jayanthi Raghu & Anr. (2012) 4 SCC 793)"

13. Generally, the phrase, any person should be given the widest possible import, and the words may cover persons other than those mentioned in various other provisions of the statute. But, if the statutory provisions suggest, that the legislature itself has intended to give a restricted meaning to the phrase, any person, then it is not open to the court to give a wide or un-restricted meaning to the words, any person. (Vide: Sita Ram v. State of Madhya Pradesh, AIR 1962 SC 1146; Sri Vedagiri Lakshmi Narasimha Swami Temple v. Induru Pattabhirami Reddi, AIR 1967 SC 781; New India Assurance Co. Ltd. v. Asha Rani & Ors., AIR 2003 SC 607; and National Insurance Co. Ltd. v. Baljit Kaur & Ors., (2004) 2 SCC 1).

14. In Commissioner of Income-Tax, Bhubaneshwar & Anr. v. Parmeshwari Devi Sultania & Ors., AIR 1998 SC 1276, while interpreting the provisions of Section 132(11) of the Income Tax Act, 1961, this Court interpreted the expression, any person, as not confined to a person searched, or against whom an order is passed, but such expression would include, even a third party giving reasons for its objections to an order and, hence, seeking appropriate relief in the matter.

15. A similar view was re-iterated in Balkrishna Chhaganlal Soni v. State of West Bengal, AIR 1974 SC 120, by this Court, interpreting the provisions of Sections 107 and 135 (b) of the Customs Act, 1962, observing that the words, any person as contained in Section 107 cannot be given a restricted Tara Chand & Ors vs Gram Panchayat Jhupa Khurd & Ors on 6 November, 2012 meaning so as to exclude from their ambit, persons who may subsequently be put up for trial. (See also: The Trustees of the Port of Bombay v. The Premier Automobiles Ltd., AIR 1981 SC 1982).

16. The instant case is required to be examined in light of the aforesaid statutory provisions and settled legal propositions. This Court in Puran & Ors. v. Gram Panchayat, Faridabad, (2006) 2 SCC 433, dealt with an identical case and examined most of the statutory provisions involved in this case. The court held that Section 4(3)(ii) of the Act, 1961 would be attracted only if the following three conditions are satisfied:

"i) The person must be cultivating land which is part of the shamilat deh of a village;

ii) He should be cultivating such land for a period of 12 years immediately preceding the commencement of the Act; and

iii) He should be cultivating such land without payment of rent or payment of charges in excess of the land revenue and cess. While dealing with the provisions of Section 8 of the Tenancy Act, the court held that nothing contained in Sections 5 to 7, shall preclude any person from establishing a right of occupancy on any ground other than the grounds that have been specified in these sections."

17. The contention of the appellants therein, that their right of occupancy was based on a ground other than the ones mentioned in Section 5 of the Tenancy Act, was based on Section 3(a) of the Act, 1952. However, while dealing with the same, the Court held as under:
Section 3 of the Act relates to vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords. It is evident therefrom that the right, title and interest shall be deemed to vest only in an occupancy tenant. Occupancy tenant is defined under Section 2(f) as meaning a tenant who, immediately before the commencement of the Proprietary Rights Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors-in-interest of an occupancy tenant. Admittedly, neither the appellants nor their predecessors were recorded as occupancy tenants in the revenue records immediately before the commencement of the Proprietary Rights Act, nor did they obtain a right of occupancy in respect of the said land either by agreement with the landlord or through a court of competent jurisdiction or otherwise after the commencement of the Act. The appellants, therefore, do not answer the definition of occupancy tenant under the Proprietary Rights Act. Consequently, they cannot derive any benefit under Section 3 of the said Act. Tara Chand & Ors vs Gram Panchayat Jhupa Khurd & Ors on 6 November, 2012 If Section 3 of the Proprietary Rights Act is inapplicable, the question that remains for consideration is whether they are entitled to the relief sought merely because the names of Sarjeet and Jivan Lal (father of Appellants 1 to 3 and father of Appellants 4 and 5 respectively) were shown as cultivating the lands for some years from 1966-67. To get excluded from the vesting under Section 4(1) of the Common Lands Act, by relying on Section 4(3)(ii), the appellants should prove that they and their ancestors were cultivating such land for a period of at least 12 years prior to the commencement of the Common Lands Act..

18. If the aforesaid test laid down by this Court, is applied to the case at hand, then undoubtedly, all the conditions specified therein have been satisfied by the appellants, and their case is also fully supported by the Gram Panchayat. The contents of its counter affidavit filed before this Court, read:

"It is, however, not denied that the petitioners have been in cultivating possession of the lands as per entries in the revenue records from the time of their forefathers for the past over seventy years or so and paying nominal rent to the Gram Panchayat from time to time and when the Panchayat refused to take rent the same was deposited in

the court. Their possession has remained uninterrupted. Though the possession has been unauthorised, the Panchayat never admitted the petitioners as its tenants."

19. In view of the above, the appellants may have a valid case. But in the said case, the provisions of Section 10 of the Tenancy Act, not attracted and thus, the facts herein become distinguishable. However, the High Court found them non-suited on the anvil of Section 10 of the Tenancy Act, observing that the expression any person, contained in Section 8, does not include a joint-owner (hisedar). It has been admitted by the parties that the appellants and their ancestors were hisedars/joint owners/co-sharers in the shamilat deh from a period prior to even 1935-36. The pleadings of the appellants, in fact, begin with such admission by them.

20. Provisions of Section 10 of the Tenancy Act put a complete embargo on a hisedar/joint-owner to claim occupancy rights. There is no agreement between the appellants and Gram Panchyat creating any tenancy in their favour. Granting the relief to the appellants would amount to ignoring the existence of Section 10 itself and it would be against all norms of interpretation which requires that statutory provisions must be interpreted in such a manner as not to render any of its provision otiose unless there are compelling reasons for the court to resort to that extreme contingent.

21. Thus, in view thereof, we do not see any cogent reason to interfere with the well-reasoned judgment of the High Court impugned before us. The appeals lack merit and are dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.