

PUNJAB AND HARYANA HIGH COURT

Hartej Bahadur Singh

Vs

The State of Punjab

(K.S.Kumaran, J.)

23.04.1964

JUDGEMENT

(K.S.Kumaran, J.)

- (1.) THIS is an appeal under Clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court dismissing the writ petition (No. 1910 of 1963) filed by Hartej Bahadur Singh.

(2.) BRIEF facts giving rise to this appeal are as follows: Hartej Bahadur Singh Appellant owned a considerable area of agricultural land in village Khangarh, District Sangrur in the erstwhile Pepsu territory. Consolidation proceedings were taken in hand in the village in 1954 and repartition finally effected in 1958. Sucha Singh Respondent, who apparently claimed to be a tenant in possession of a portion of the land belonging to the Appellant, on 13th of October, 1958, filed an application under Section 43 of the Pepsu Tenancy and Agricultural lands Act, 1955 (hereinafter referred to as the Tenancy Act), stating that he had been in possession of the land as a tenant till Rabi 1958, and thereafter "the consolidation authorities carved out a new tak and gave it to Respondent (Hartej Bahadur Singh) and that the Petitioner (Sucha Singh) had not been given possession over any area of land". He further went on to state that during kharif 1958, Hartej Bahadur Singh had taken forcible possession of the land which was with him. He, consequently, asked for restoration of the possession of the land of which he was the tenant. The Collector, after Hartej Bahadur Singh had been made a party to the proceedings before him, by his order dated 17th of December, 1962, dismissed the application saying that Sucha Singh had miserably failed to prove that he had been wrongfully dispossessed by Hartej Bahadur Singh. The position taken by the Appellant before the learned Collector was that the consolidation authorities had correctly delivered the possession of the land in dispute to the Appellant and that Sucha Singh had, by a mutual compromise, surrendered possession of the land in dispute prior to 1954. After giving the facts and the contentions raised by the parties, the learned Collector observed as follows: A perusal of the application made by the Applicant reveals that in para No. 2 the Applicant has admitted that the possession of the land in dispute

was delivered by the consolidation authorities to the Respondent (Hartej Bahadur Singh) and not to the Applicant. From this very admission in the Application, the Applicant's case of forcible dispossession is shattered. Referring to the witnesses produced by the Applicant, who belonged to a different village and on whom the Collector was not inclined to place much reliance, he further stated that these witnesses had also mentioned that Hartej Bahadur Singh started cultivating the land after the consolidation proceedings. He, therefore, came to the conclusion that this evidence taken with the averments made in Para No. 2 of the Application, showed that "Hartej Bahadur Singh was put in possession by the consolidation authorities". Sucha Singh went up in appeal to the Commissioner, who accepted the appeal and directed that the Collector should go into the question as to what Khasra numbers Sucha Singh was in possession before consolidation and put him in possession of the land which had been given in lieu of the same. In coming to this decision, the learned Commissioner did not set aside the findings of the learned Collector that Hartej Bahadur Singh was, in fact, given possession of the land in dispute by the consolidation authorities or that Sucha Singh had not been forcibly dispossessed by Hartej Bahadur Singh. All that he found was that from the revenue records it appeared that Sucha Singh had been in cultivating possession of the khasra numbers in dispute prior to 1958 and that he had not been ejected out of this holding through any process of law. While dealing with the plea of the landlord that there had been a compromise before the Panchayat whereby Sucha Singh gave up his tenancy of his own accord, he felt that this would not help the landlord because it had not been proved whether the compromise related to this parcel of the land which is now in dispute and that "even if this compromise be admitted, it is not in accordance with the law and unless the transfer is in accordance with the law, it is invalid. Such a compromise, therefore, cannot be relied upon in these proceedings." The landlord went up in revision to the Financial Commissioner who rejected it saying that, according to the landlord, Sucha Singh was not in possession of the land before 1958 while this statement was refuted by Sucha Singh. He then went on to say that ignoring the stray entries, the Collector should carefully find out which of the khasra were cultivated by Sucha Singh before consolidation and possession should be restored to him of only such land as had been substituted for those khasra numbers. It was against these orders of the Commissioner and the Financial Commissioner that the writ was filed by the landlord.

(3.) THE learned Single Judge very rightly held that even if the consolidation authorities decided the dispute with regard to the right holder being a tenant or not, the conclusion so arrived at cannot be a final adjudication on the question of the relationship between the parties. He then discussed the provisions of the Tenancy Act above referred to and holding that under Sections 7 and 7 -A, the tenancy can be terminated on the grounds mentioned therein and that Section 43 gives overall power to the Collector to evict a person who is in wrongful or unauthorised possession and put the tenant into possession if he is so entitled, dismissed the writ application. The landlord has come up in appeal. Section 43 of the Tenancy Act is in the following words: 43 (1) Any person who is in wrongful or unauthorised possession of any land - (a) the transfer of which either by the act of parties or by the operation of law is invalid under the

provisions of this Act, or (b) to the use and occupation of which he is not entitled under the provisions of this Act, may, after summary enquiry, be ejected by the Collector, who may also impose on such person a penalty not exceeding five hundred rupees. So far as tenant is concerned, Section 7 of the Tenancy Act provides that the tenancy cannot be terminated except for the reasons given therein. The question for determination, however, in the present case is: In What circumstances is the Collector' invested with the jurisdiction given by Section 43 to evict a person and put some other person in possession after summary enquiry? ;