(1963) 07 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 1559 of 1962

Jaimal and Another		APPELLANT
	Vs	
The Financial Commissioner, Punjab, and Others		RESPONDENT

Date of Decision: July 29, 1963

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab Land Revenue Act, 1887 - Section 2, 2(6)
- Punjab Security of Land Tenures Act, 1953 - Section 18, 9, 9(1)(vi)

Hon'ble Judges: Grover, J; Dua, J

Bench: Division Bench

Advocate: H.L Sibal and S.C. Sibal, for the Appellant; H.L. Sarin, K.K. Cuccria and V.P. Sood, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Grover and Dua, JJ.
This is a petition under Article 226 of the Constitution which was admitted to a hearing by Division Bench apparently because the correctness of the judgment delivered by me sitting singly in Pal Singh v. Mst. Tej Kaur c.w. No. 1405 of 1960, on 17th July, 1962, which had been followed by the Financial Commissioner in the present case had been challenged.

2. It is common ground that Respondents 4 to 10 were owners of certain land in village Mehnda, Tehsil Hansi, District Hissar. She Parshad Respondent So. 3 was the tenant in respect of land measuring 194 kana''s 12 marlas and 85 kanals 8 marlas In The jamabandi entries of 1942 Jaimal Singh Petitioner No. 1 and Het Ram father of Ram Singh Petitioner, No. 2 were shown as who were cultivating the aforesaid land. In the jamabandi entries of 1946-47 they were shown as sub-tenants under

Respondent No. 3. After the enactment of Punjab Security of Land Tenures Act, 1953 (to be referred to as the Act) Petitioners 1 and 2 made an application u/s 18 of the Act. for purchase of the lands in question. While this application was pending, on 25th October 1957 Respondents 4 to 10 sold 194 kanals 12 marlas to Sheo Parshad Respondent No. 3 and 85 kanals 8 marlas to his sons Gopi Ram and Parmeshwari Dass by means of registered deeds of sale. In November 1959 the Assistant Collector allowed the application of the Petitioners to the extent of 274 kanals. The Petitioners claimed to have paid six instalments towards the price. Respondent No. 3 Sheo Parshad took the matter in appeal on his own behalf and on behalf of his sons. The Collector held that the Petitioners were entitled to purchase only 85 kanals 8 marlas of land i. e. the land which had been sold by Respondents 4 to 10 in favour of Gopi Ram and Parmeshwari Bass. The Petitioners then preferred an appeal to the Commissioner who decided in their favour. Sheo Parshad approached the Financial Commissioner on the revisional side and the decision of the Financial Commissioner having been given in favour of Sheo Parshad and his son Gopi Ram and Parmeshwari Dass, the present petition has been brought to this Court challenging that order.

3. The contention raised by Mr. H.L. Sibal, the learned Counsel for the Petitioners, is based on Section 18 of the Act, the relevant part of which may be set out:-

18. (1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a land-owner other than a small land-owner-

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or

* * * *

shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of the land-owner, in the case of a tenant falling within Clause (i)

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 during any period of his continuous occupation, 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."

It is maintained that the Petitioners have been in continuous occupation of the land comprised in their tenancy for a minimum period of six years and by virtue of Section 2(6) they are tenants and, therefore, entitled to purchase from the land-owner the land held by him and not included in his reserved area. The definition of land-owner as given in Section 2(1) is "a person defined as such in the Punjab Land Revenue Act, 1887 (Act XVII of 1887), and shall include an ''allottee'' and ''lessee'' as defined in Clauses (b) and (c), respectively, of Section 2 of the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (Act XXXVI of 1949)". The definition

of "tenant" as contained in Section 2(6) is-

Tenant has the meaning assigned to it in the Punjab Tenancy Act, 1887 (Act XVI of 1887), and includes a sub-tenant and self-cultivating lessee, but shall not include a present holder, as defined in Section 2 of the Resettlement Act.

The only question, therefore, is whether the Petitioners who admittedly are sub-tenants can be regarded as tenants of the land-owner so as to be able to derive the benefit conferred by Section 18. It is not disputed that Respondent No. 3 could under the provisions of Section 18 have exercised the right to purchase from the landowner but it is contended that owing to the first proviso to Sub-section (1) he was debarred from exercising any such right because his case did not fall within the exceptions appearing in the proviso e. g. as tenant suffering from a legal disability or physical infirmity or if a woman being a widow or unmarried. It is said that since Respondent No. 3, the tenant, could not avail of the benefit conferred by Section 18, the Petitioners who also fell within the definition of the word "tenant" were entitled to exercise the right given by that section.

4. In my earlier decision while referring to Section 9(1)(vi) of the Act as also the first proviso appearing in Section 18 I had observed:-

The former provision makes a tenant liable to ejectment if he has sub-let the tenancy or a part thereof. The first proviso to Section 18 declares in unequivocal terms that no tenant shall be entitled to exercise any such right if he had sublet the land or its portion, as the case may be, to any other person during any period of his continuous occupation, unless during that period the tenant was suffering from a legal disability or physical infirmity. Two consequences would flow from these provisions. The first is that a tenant who inducts a sub-tenant is liable to ejectment himself and if the owner takes any step to eject him the sub-tenant would also be automatically ejected along with him. This means that the sub-tenant has no independent right. The proviso to Section 18 disentitles the tenant himself from exercising any right under that section if he has sublet the land or a portion thereof. This shows that in a case like the present one a tenant himself cannot exercise that right. It is difficult to envisage that the legislature would allow a sub-tenant to exercise that right especially when sub-letting has taken place. The scheme of Section 18 and the manner in which the word ''tenant'' has been embodied therein further show that the reference is to the original tenant and not to the sub-tenant. According to Section 2 itself, as has been mentioned before, the overriding requirement of the context can be given effect to.

Mr. Sibal has submitted that the above view cannot be sustained if the entire scheme of the Act is examined and it is borne in mind that the definition clause makes a sub-tenant a tenant and due significance is given to the existence of the non-obstante clause in Section 18 which makes that section self-contained and debars the Court from interpreting It by referring to Section 9 of the Act. It is

pointed out that the main object of the Act is to protect the rights of the tenants and to ensure that change of title does not affect the continuity of the tenancy. For instance, Section 6 provides that no transfer of land except a bona fide sale or mortgage with possession or a transfer resulting from inheritance made after the 15th August 1947 and before 2nd February 1955 shall affect the rights of the tenant on such land under the Act. Section 8 preserves the continuity of a tenancy which is not to be afiec-ted by the death of the landowner, the death of the tenant or any change therein under the same landowner. Section 9-A is to the effect that no tenant liable to ejectment under Clause (i) of Sub-section (1) of the section next preceding shall be dispossessed of his tenancy unless he is accommodated on a surplus area in accordance with the provisions of Section 10-A or otherwise on some other land by the State Government. Section 10-A makes a provision for the authority who is competent to utilise any surplus area for the resettlement of tenants ejected, or to be ejected, under Clause (i) of Sub-section (1) of Section 9. Section 17 confers rights on the tenant of a land-owner who has been in continuous occupation for a certain number of years to pre-empt in preference to the rights of other pre-emptors under the Punjab Preemption Act, 1913, the sale or foreclosure of the land other than the land comprised in the reserved area of the land-owner. The proviso to Section 17 is similar to the proviso appearing in Section 18 which is under consideration and a tenant who has sublet the land or a portion thereof is debarred from exercising the right conferred by Section 17. The stress which has been laid by Mr. Sibal is largely on the rights which have been conferred en the tenants by the Legislature to ensure that those persons who are actually cultivating the land and are in its occupation and possession should not be disturbed in their holdings and should have even the right to acquire the property in certain eventualities from the land owners. The purpose for which the Act has been enacted is well-known and there can be no doubt that the scheme is to give as much protection to the rights of the tenants as is consistent with the present day pattern of agrarian economy. But even keeping that aspect in view it is to be seen whether in the context of Section 18 a sub-tenant would be a tenant of the land-owner. In the English Agricultural Holdings Act, 1948, in Section 94 the definition of the tenant was given as follows:-

"tenant" means the holder of land under a contract of tenancy, and includes the executors, administrators, assigns, committee of the estate, or trustee in bankruptcy of a tenant, or other person deriving title from a tenant.

The opening part of Sub-section (1) made it quite clear that this would be the definition "unless the context otherwise requires". In Sherwood (Baron) v. Moody (1962) 1 All E. R. 389 the landlord of an agricultural holding served a notice to quit on his tenants, who served a notice to quit expiring on the same day on their sub-tenant without referring therein to the notice they had received from their landlord. The tenants served a counter-notice an their landlord u/s 24(1) of the aforesaid Act, but the county agricultural executive committee, acting on behalf of

the Minister of Agriculture and Fisheries, consented to the operation of the landlord''s notice. The sub-tenant also served a counter-notice on the tenants and the committee consented to the operation of the tenants'' notice, but the Agricultural Land Tribunal allowed an appeal by the sub-tenant, thereby, u/s 24(1), rendering the tenants notice of no effect. Ormerod J held that the notice to quit served by the landlord on the tenants having been approved by the Minister, was a valid notice to quit which put an end to the tenancy of the whole of the property at the expiry of the notice, and, in the absence of any provision in the Agricultural Holdings Acts and the regulations made thereunder enabling a sub-tenancy to exist after the tenancy had been terminated by a notice to quit which was valid under the Acts, by the ordinary application of common law, put an end also to any sub-tenancy which had been created during the existence of the tenancy and, therefore, the landlord was entitled to possession of the whole holding. At page 394 the following observations were made which deserve consideration:

It may well be that in certain circumstances the word ''tenant'' in the Agricultural Holdings Act, 1948, will include a sub-tenant, and other persons as well, but whether it does so in any particular case must depend on the context. Although a sub-tenant may have the privileges of a tenant in certain circumstances, a tenant is a tenant of an immediate landlord, and he has rights only in relation to that landlord and not in relation to some other person. If the Act is to be read in any intelligible way at all, it would not be possible u/s 24 or section 25 to consider a sub-tenant as being in the position of a tenant in relation to the head landlord.

In Makhan Lal Kela v. Girdhari Lal AIR 1951 All 421 it has been observed that although in the definition of the word "tenant" it is provided that it includes a sub-tenant but read in the light of the definition of "landlord" it means that in the various provisions in the Act the word "tenant" should be deemed to include a sub-tenant where the action is taken by a tenant-in-chief as against the sub-tenant and that a sub-tenant could not be regarded as a tenant in relation to the true owner of the accommodation. The learned Allahabad Judge also applied the rule of construction that the language of the statute should not be stressed so as to place an interpretation which it does not reasonably admit of. He found nothing in the U. P. (Temporary) Control of Rent and Eviction Act, 1947, which would show that the sub-tenant had been given any rights independent of those of the tenant-in-chief. To the same effect is the decision in Ram Bharose Vs. Ajeet Kumar and Another, . The cases discussed above show that merely because according to the definition in a particular enactment, the word "tenant" will include a sub-tenant it does not follow in a rigid manner that the sub-tenant would have the same privileges which a tenant would have in certain circumstances. It will depend on the context in which the word "tenant" is used with reference to tablet landlord or the land-owner and the nature of the rights which are con-ferred on him and whether those rights can be deemed to have been conferred on the sub-tenant as well if the tenant for some reason or the other becomes disentitled to exercise those rights. Section 18 clearly confers the

right to purchase from the land-owner on his tenant and nobody else. If his tenant has been guilty of subletting, then he forfeits that right by virtue of the first proviso to Sub-section (1). If he forfeits that right and cannot exercise it, it is difficult to see how the Legislature could have intended conferring that right on the sub-tenant who according to well established principles would sink or swim with his landlord, namely, the tenant of the land-owner. Section 9(6) provides that no land-owner shall be competent to eject a tenant except when such a tenant has sublet the tenancy or a part thereof. This would at once attract the argument that a tenant who inducts a sub-tenant is liable to ejectment himself and if the land-owner takes any step to eject him the sub-tenant would be automatically ejected along with him and that the sub-tenant cannot claim any protection in his own right u/s 9 from eviction by the land-owner. The existence of the non-obstante clause in Section 18 does not and cannot make an examination of the provisions of section unwarranted as that section indicates the grounds on which alone a land-owner can evict his tenant and there is nothing in it which would be repugnant to or militate against the provisions of Section 18. For these reasons it is difficult to accept that the Legislature intended to confer any rights u/s 18 on the sub-tenant by subletting- to whom the tenant himself becomes debarred from exercising the right of purchase.

5. We can find no reason or justification for differing from the view which has already been expressed in the previous case, with the result that this petition must fail and it is dismissed, but in the circumstances there will be no order as to costs.