

Before P. C. Jain, A.C.J. & S. S. Kang, J.

DHARAM PAL AND OTHERS,—*Petitioners.*

versus

GANESH DASS AND OTHERS,—*Respondents.*

Civil Writ Petition No. 137 of 1983.

November 19, 1984.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Sections 7 and 7-A—Tenants jointly holding land ordered to be ejected—Ejectment order made operational only after tenants allotted equivalent area of land—One tenant dying during pendency of ejectment proceedings leaving a number of legal heirs—Each legal heir of such deceased tenant—Whether liable to allotment of area equivalent to land comprising the joint tenancy—Scope of section 7-A—Explained.

Held, that the Pepsu Tenancy and Agricultural Lands Act, 1955, constitutes a measure of agrarian reforms, in order to bring about harmony between the landlord and the tenants. The Act was framed to protect the tenant against unjust termination of their tenancies and to provide security of tenure to tenants by protecting them from unreasonable and capricious ejectment. The grounds for termination of tenancy have been furnished in sections 7 and 7-A of the Act and both the said sections regulate the termination of tenancy. However, under section 7-A a specific protection after the termination of the tenancy has been provided and a tenant can be ejected from his tenancy only from an area exceeding 5 standard acres or from an area of 5 standard acres if the tenant is allotted by the State Government alternative land of equivalent value in standard acres. The object of the proviso to section 7-A is that on the passing of the ejectment orders a tenant should not be thrown on the road side. Under the said proviso, the tenants are entitled jointly to the allotment of land equivalent to the total area held by them in the tenancy and it cannot be held on the language of section 7-A nor on any principle that the tenants can claim that they should be individually allotted land equivalent to the joint holding of the tenancy. As such it has to be held that on the demise of a tenant the successor-in-interest under proviso to section 7-A of the Act are collectively entitled to the allotment of land equivalent to the land comprised in their tenancy and each of the successors-in-interest is not entitled to the allotment of land equivalent to the land comprised in the joint tenancy.

(Paras 3, 4 & 5).

Gurmit Ram and others vs. Financial Commissioner, Revenue, Punjab and others, 1979 P.L.J. 152. (Overruled)

Civil Writ Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to:—

- (i) *issue a writ of certiorari or such other writ, order or direction that may be deemed appropriate calling for the records of respondent Nos. 2 to 5 relating to the ejectment proceedings of the petitioners from 17K-7M of the land in question and after a perusal of the same to quash the orders dated 7th September, 1982, 31st December, 1981, 22nd March, 1976 and 23rd September, 1955 of respondent Nos. 2, 3, 4 and 5 respectively.*
- (ii) *It is further prayed that pending the disposal of this writ petition, the dispossession of the petitioners from 17 kanals 7 marlas of land in question may please be stayed.*
- (iii) *Costs of the petition be allowed to petitioners against Respondents.*

Dated the 19th November, 1984.

R. C. Puri, Advocate.

Nemo.

JUDGMENT

Sukhdev Singh Kang, J.

(1) Dharam Paul, petitioner No. 1, and his brother Deep Chand were tenants on 17 *kanals*—7 marlas of land situated in the revenue estate of Village Kapuri, Tehsil Dadri, District Bhiwani, under Ganesh Dass, respondent No. 1. Previously, this land was owned by one Chokha Ram, a displaced person. It was purchased by Ganesh Dass. He owns 30 acres of land. Ganesh Dass filed a suit for ejectment of his tenants Dharam Paul and Deep Chand from the suit land. The Assistant Collector Ist Grade passed a decree for ejectment and recovery of rent. On an appeal by the tenants, the Collector remanded the case for a fresh decision after affording the parties an opportunity to lead evidence. After remand, the Assistant Collector on the basis of the evidence led by the parties came to the conclusion that the tenants had made default in the payment of rent for three years and were liable to pay Rs. 156 to the land-owner within six months. He accepted Ganesh Dass's application and ordered the tenants' ejectment. The tenants went up in appeal which was partly allowed by the Collector on March 22, 1976. He affirmed the orders of ejectment but directed that since tenants were there on the land, in dispute, prior to the commencement of the Act, the land-owner will get the possession of the land, in dispute, only when the appellant-tenants get land equivalent to the land in dispute out of the surplus pool. Both sides were dissatisfied with this order and

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preferred two appeals. Both the appeals were dismissed by the Additional Commissioner on December 31, 1981. Deep Chand had died during the pendency of this appeal. Only Vijay Singh, petitioner No. 2 made an application and was impleaded as a legal representative of Deep Chand, Dharam Paul, petitioner No. 1, Vijay Singh, Raj Singh, Satbir Singh and Dharambir petitioners Nos. 2 to 5 sons of Deep Chand, Smt. Sarbati, petitioner No. 6 widow of Deep Chand and Smt. Lali, petitioner No. 7 daughter of Deep Chand filed a revision petition before the Financial Commissioner and raised *inter alia* the same plea that Dharam Paul and each of the successors of Deep Chand were entitled to the allotment of 17 *kanals*—7 *marlas* of land before they could be evicted from the land, in dispute. The Financial Commissioner did not accept this contention and held that the petitioner-tenants were not entitled to the allotment of more than 17 *kanals*—7 *marlas* of land from the surplus pool and the Collector had rightly decided this issue. Aggrieved by this order, the petitioners filed the present writ petition. The same very contention was raised by the petitioners at the time of motion hearing. Reliance was placed on a Single Bench decision of this Court in *Gurmit Ram and others v. Financial Commissioner, Revenue, Punjab and others*, (1), wherein it was held that sons of the deceased-tenant on the death of their father became tenants in their own rights and they became entitled to the benefit of the provision of sub-section (1) of section 7-A of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as 'the Act') and they were entitled to the allotment of alternative land of equivalent value in standard acres to the area under their cultivation. The Motion Bench was of the view that *Gurmit Ram's case* (supra) required re-consideration. The writ petition was admitted and ordered to be heard by a Division Bench.

(2) It will be expedient to reproduce the relevant statutory provisions before embarking upon determination of the legal issue raised in this writ petition:—

The Pepsu Tenancy and Agricultural Lands Act, 1955—

S. 2(k).—'tenant' has the meaning assigned to it in the Punjab Tenancy Act, 1887 (Punjab Act XVI of 1887), but does not include a person—

(i) who holds a right of occupancy, or

(1) 1979 P.L.J. 152.

(ii) who is relative of the tenant within the meaning of sub-clause (2) of clause (g).

* * * *

(m) all other words and expressions used herein and not defined in the Punjab Tenancy Act, 1887 (Punjab Act XVI of 1887), or the Punjab Land Revenue Act, 1887 (Punjab Act XVII of 1887), shall have the meanings assigned to them in either of those Acts.

S. 7-A(1) Subject to the provisions of sub-section (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.”

The Punjab Tenancy Act, 1887:

“S. 4.—*Definitions.*—In this Act, unless there is something repugnant in the subject or context,—

(1) to (4)

* * * *

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(5) "tenant" means of person who holds land under another person and is or but for a special contract would be, liable to pay rent for that land to that other person; but it does not include—

- (a) an inferior landowner, or
- (b) a mortgagee of the rights of a landowner, or
- (c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, 1887 (XVII of 1887), for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear, or
- (d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it :

* * * *

(7) "tenant" and "landlord" include the predecessors and successors in interest of a tenant and landlord, respectively:

(8) "tenancy" means a parcel of land held by a tenant of a landlord under one lease or one set of conditions:

* * * *"

(3) The Act constitutes a measure of the agrarian reforms. In order to bring about harmony between the "landlord" and their "tenants" whose relations had become strained resulting in an explosive situation land reforms and consolidation of existing law relating to tenancies was the need of the hour. So, the Act was framed to protect the tenants against unjust termination of their tenancies and to provide security of tenure to tenants by protecting them from unreasonable and capricious ejection. The grounds for termination of tenancy have been furnished in sections 7 and section 7-A of the Act. Chapter III thereof has been captioned "general rights of tenancy" and both sections 7 and 7-A regulate the termination of tenancy. The orders of termination of tenancy lead to the eviction of tenants. The tenancy of a tenant is terminated on the establishment of grounds specified in sections 7 and 7-A. However, under section 7-A, a further protection after the termination of the tenancy has been provided. A tenant can be ejected from his tenancy only from an area exceeding 5 standard acres or from an area of 5 standard acres if he is allotted by the State Government alternative land of equivalent value in standard acres.

(4) In the present case, Dharam Paul and Deep Chand were tenants under Ganesh Dass. Both of them held one parcel of land under one lease. It was one tenancy. They did not cultivate separate parcels of land individually. It was a joint cultivation. On the death of Deep Chand, petitioner Nos. 2 to 7 became tenants along with Dharam Paul of this very parcel of land. They were not individually cultivating separate parcels of land. They continued to cultivate it jointly. The object of the proviso to section 7-A is that on the passing of the ejectment orders a tenant should not be thrown on the road side. It is provided that the tenant should be first allotted land equivalent to the land forming part of his tenancy. However, a ceiling of 5 standard acres for such allotment was fixed. Within this limit, the tenants were to get equivalent of their tenancy in standard acres. In the present case, the petitioners were tenants over 17 *kanals*—7 *marlas* of land jointly. None of them could claim to be in cultivating possession of whole of this land. The possession and cultivation was joint. So, they under the proviso to section 7-A were entitled jointly to the allotment of land equivalent to 17 *kanals*—7 *marlas*. Neither on the language of section 7-A, nor on any principle, the petitioners can claim that they individually be allotted land equivalent to 17 *kanals*—7 *marlas*. If this contention is accepted, then it will be putting premium on the defaults by the tenants. If they had not been ejected they would have continued cultivating and enjoying the fruits of 17 *kanals*—7 *marlas* of land. On their ejectment for non-payment of rent, each of them could not get land of the value of 17 *kanals*—7 *marlas*. This is just and equitable. Furthermore if this interpretation is accepted then successor-in-interest of tenants can get collusive ejectment orders just to get benefits of the demise of their predecessor-in-interest. In the very nature of things the allottable surplus land with the State is limited. It has to be equitably distributed amongst the eligible ejected tenants or persons belonging to other categories. The interpretation canvassed by the petitioners will defeat the very purpose of equitably distributing the meagre surplus land amongst the numerous tillers of the soil. On the death of a tenant leaving behind a large number of sons and daughters, the family may claim to the allotment of land which may even exceed the ceiling limit fixed by the Haryana Ceiling on Land Holdings Act, 1972. It is thus obvious that the interpretation canvassed by the petitioners does not comport with the scheme of distributive social justice and the clear language employed in section 7-A of the Act. The petitioners' contention is neither based on any principle nor is supported by any binding precedent. With great respect to the

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and another (P. C. Jain, J.)

learned Judge who decided *Gurmit Ram's case* (supra) we have not been able to persuade ourselves to concur in the ratio of that case.

(5) We hold that on the demise of a tenant his successors-in-interest under Proviso to Section 7-A of the Act are collectively entitled to the allotment of land equivalent to the land comprised in their tenancy. Each of them individually is not entitled to the allotment of land equivalent to the land comprised in the joint tenancy.

(6) Consequently, we find no merit in this writ petition and dismiss the same. However, there shall be no order as to costs.

Prem Chand Jain, A.C.J.—I agree.

N.K.S.

FULL BENCH

Before P. C. Jain, A.C.J., S. P. Goyal & I. S. Tiwana, JJ.

NIEMLA TEXTILE FINISHING MILLS (P) LTD.,—*Petitioner.*

versus

THE INCOME TAX OFFICERS AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 4381 of 1975

November 30, 1984.

Income Tax Act (XLIII of 1961)—Section 280-ZB—Industries (Development and Regulation) Act (LXV of 1951)—Section 3(i) and First Schedule, Entry 23—Mere dyeing, printing, singeing or otherwise finishing or processing of fabrics—Whether amounts to 'manufacture or production of textiles'—Assessee carrying on such an activity—Whether entitled to the grant of a tax credit certificate under section 280-ZB.

Held, that the First Schedule to the Industries (Development and Regulation) Act, 1951 specifies the names of the articles which, if manufactured or produced by an industry, would allow to that industry advantage of the provisions of Section 280-ZB of the Income Tax Act, 1961. In other words, only that industry which