

Before Ajay Tewari, J.

KAPTAR SINGH AND OTHERS—Petitioners

versus

**FINANCIAL COMMISSION (APPEALS), PUNJAB,
CHANDIGARH AND OTHERS—Respondents**

CWP No. 15452 of 1992

July 29, 2013

Constitution of India, 1950 - Art. 226/227 - Writ Jurisdiction - Punjab Security Land Tenures Act, 1953 - S. 10A - Punjab Security of Land Tenures Rules, 1956 - Rl. 20 C - Land in the hands of big land owner declared surplus - Allotted to tenant under Section 10A of the Act - Tenant did not fulfil the requirement under Rule 20-C of the Rules - Would such tenant acquire the status of resettled allottee and, as such, whether he could will away his tenancy rights - Held, no - Orders of authorities below directing of ejection of tenant upheld - Petition allowed.

Held, that counsel for the petitioner has further argued that once Chanan Singh did not complete the formalities required under Rule 20-C of the Rules, he did not also require the status of re-settled allottee and once that is so, he could not will away his tenancy rights. For this proposition, he has placed reliance on Karam Chand and another v. Kewal Krishan & Ors, 1985 PLJ 581, wherein this Court held as follows :-

"5. What to talk of tenancy-at-will, even the inheritance of occupancy rights is governed by Section 59 of the Punjab Tenancy Act. There is no warrant for the proposition that the tenancy rights can be willed away by the tenant. It was held in Sawan Singh's case (supra) while dealing with the Punjab Tenancy Act that there is no power in the occupancy tenant to dispose of the occupancy tenancy by a Will taking effect after his death. The matter was also considered by this Court in Madan Singh and another v. Haryana State and others, 1978 Punjab Law Reporter 553, while interpreting Section 10-A of Punjab Security of Land Tenures Act....."

(Para 6)

(Ajay Tewari, J.)

Further held, that counsel for the official respondents is not able to cite any contrary judgment. In these circumstances, this writ petition is allowed and the order dated 5.8.1991, passed by the Financial Commissioner (Appeals) is set aside and the orders dated 12.9.1985 passed by the Assistant Collector 1st Grade, dated 28.2.1986 passed by the Collector (Appeals) Amritsar, and the order dated 19.7.1988 passed by the Commissioner (Appeals), Jalandhar Division, Jalandhar are upheld.

(Para 6)

C.M Munjal, Advocate, *for the petitioners.*

I.P. Goyat, Addl. A.G Punjab for respondents No.1 to 4.

AJAY TEWARI, J. (ORAL)

(1) None has entered appearance on behalf of respondent No.5 despite service.

(2) Prayer in this writ petition is for quashing the order dated 5.8.1991, passed by the Financial Commissioner (Appeals) whereby he allowed the revision filed by respondent No.5 and set aside the orders dated 12.9.1985 passed by the Assistant Collector 1st Grade, dated 28.2.1986 passed by the Collector (Appeals) Amritsar, and the order dated 19.7.1988 passed by the Commissioner (Appeals), Jalandhar Division, Jalandhar.

(3) Brief facts are that father of petitioners No.1 and 2, namely, Natha Singh was a big land owner and his tenant was one Chanan Singh. Some land of Natha Singh was declared surplus under the Punjab Security of Land Tenures Act, 1953 (for short "the Act") and allotted to Chanan Singh under Section 10-A of the Act. However, Chanan Singh did not fulfill the requirement of Rule 20-C of the Punjab Security of Land Tenures Rules, 1956 (for short "the Rules"). Thereafter, the landlord filed a petition before the Assistant Collector 1st Grade, Amritsar, for ejection of the tenant on the ground that he had not paid the rent. Another supervening factor was that Chanan Singh died issueless and widow-less and respondent No.5 claimed to have stepped into his shoes as legatee. The non-payment of rent was also not disputed. The Assistant Collector, vide order dated 9.8.1982, directed ejection of Chanan Singh. Thereafter, Chanan Singh filed an appeal against the order dated 9.8.1982 which was allowed by the Collector, vide order dated 31.1.1983 and the matter was remanded back to the

Assistant Collector 1st Grade with a direction that both the parties be given full opportunity and the case be decided afresh after perusing the surplus file of Natha Singh (big land-owner). The Assistant Collector, after going through the entire evidence and hearing both the parties, vide his order dated 12.9.1985 (Annexure P-1), maintained his earlier order dated 9.8.1982. Chanan Singh filed an appeal against the order dated 12.9.1985 before the Collector Amritsar, who dismissed the same, vide order dated 28.2.1986 (Annexure P-3). Revision filed against the aforesaid orders was also dismissed by the Commissioner (Appeals) Jalandhar Division, vide order dated 19.7.1988. In the meantime, the Collector Agrarian Ferozepur, while determining the surplus case of Natha Singh, issued notice under Section 9 of the Punjab Land Reforms Act, 1972 to petitioner No.2, who filed objection to the said notice. The Collector (Agrarian) Ferozepur, vide his order dated 4.5.1983 (Annexure P-4) ultimately withdrew the said notice issued to petitioner No.2. Meanwhile, Chanan Singh died and Balkar Singh (respondent No.5) stepped into his shoes. Feeling aggrieved against the order (Annexure P-3), respondent No.5 filed a revision petition before the Financial Commissioner (Appeals). The said revision petition having been allowed, the petitioners are before this Court.

(4) The Financial Commissioner (Appeals) held that onus to fulfill conditions of Rule 20-C of the Rules lay upon the landlord because it was for the landlord to approach the Assistant Collector who would then call upon the tenant to execute the Kabuliyatnama. The Financial Commissioner further held that Chanan Singh being re-settled tenant improved his status after coming into force of the Punjab Land Reforms Act and become an owner and consequently rejected the eviction petition.

(5) Counsel for the petitioners has argued that in the first place the finding of the Financial Commissioner that onus to fulfill the conditions of Rule 20-C of the Rules lay on the landlord is not at all brought out from the reading of the said Rules and in fact, the Financial Commissioner has interpreted the provisions perversely. He has relied upon a decision of the Hon'ble Supreme Court in Financial Commissioner, Haryana vs Kela Devi and another, 1980 PLJ 121, wherein it was held as follows :-

“5. In order to understand the full meaning and effect of the provisions of section 10-A, it is necessary to make a cross-reference to rules 18, 20-A, 20-B and 20-C of the Punjab Security of Land Tenures

Rule, 1956 (herein after referred to as the Rules). Rule 18 deals with the procedure for allotment of "surplus area" to other resettled tenants. Rule 20-A provides for the issue of certificates of allotment of lands to them, and rule 20-B provides for delivery of possession and makes it obligatory for the resettled tenant to take possession of land allotted to him within a period of two months or such extended period as may be allowed by the officer concerned. Rule 20-C provides, inter-alia, for the execution of a "qabuliyat" or "patta" by a re-settled tenant. It would thus appear that while allotment of land is an initial stage in the process of utilisation of the "surplus area", it does not complete that process as it is necessary for the allottee to obtain a certificate of allotment, take possession of the land within the period specified for the purpose, and to execute a "qabuliyat" or "patta" in respect thereof. The process of utilisation contemplated by section 10-A of the Act is therefore complete in respect of any "surplus area", only when possession thereof has been taken by the allottee or the allottees and the other formalities have been completed, and there is no force in the argument that a mere order of allotment has the effect of completing that process."

(6) Counsel for the petitioner has further argued that once Chanan Singh did not complete the formalities required under Rule 20-C of the Rules, he did not also require the status of re-settled allottee and once that is so, he could not will away his tenancy rights. For this proposition, he has placed reliance on *Karam Chand and another v. Kewal Krishan & Ors*, 1985 PLJ 581 wherein this Court held as follows :-

"5. What to talk of tenancy-at-will, even the inheritance of occupancy rights is governed by Section 59 of the Punjab Tenancy Act. There is no warrant for the proposition that the tenancy rights can be willed away by the tenant. It was held in *Sawan Singh's case (supra)* while dealing with the Punjab Tenancy Act that there is no power in the occupancy tenant to dispose of the occupancy tenancy by a Will taking effect after his death. The matter was also considered by this Court in *Madan Singh and another v. Haryana State and others*, 1978 *Punjab Law Reporter* 553, while interpreting Section 10-A of Punjab Security of Land Tenures Act....."

(7) Counsel for the official respondents is not able to cite any contrary judgment.

(8) In these circumstances, this writ petition is allowed and the order dated 5.8.1991, passed by the Financial Commissioner (Appeals) is set aside and the orders dated 12.9.1985 passed by the Assistant Collector 1st Grade, dated 28.2.1986 passed by the Collector (Appeals) Amritsar, and the order dated 19.7.1988 passed by the Commissioner (Appeals), Jalandhar Division, Jalandhar are upheld.

(9) No order as to costs.

S. Gupta