

MISCELLANEOUS CIVIL

Before Bal Raj Tuli, J.

BACHNA,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents

Civil Writ No. 1583 of 1970.

August 7, 1970.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Sections 23 and 24—Pepsu Tenancy and Agricultural Rules (1958)—Rules 15 and 17—Certificate of acquisition of proprietary rights by tenant—Whether to bear the date on which the tenant pays the first instalment of the compensation determined or the date of its actual issue—Issuance of such certificate—Whether a mere procedural formality—Rule 15—Whether goes beyond sections 23 and 24—Provisions of the rule—Whether mandatory.

Held, that it is the certificate granted under section 23(3) of the Pepsu Tenancy and Agricultural Lands Act, 1955, that declares the tenant to be the land-owner of the land specified therein and it is from the date of the certificate that the rights of the previous land-owner are extinguished and the tenant ceases to be liable for rent to the land-owner. It is the certificate alone which becomes the conclusive evidence of the acquisition of the proprietary rights by the tenant, that is, it is only on the basis of that certificate that the tenant can assert himself to be the land-owner of the land of which he has acquired proprietary rights. There is no provision in section 23 of the Act declaring that the tenant shall become land-owner in respect of the land, the proprietary rights of which he has acquired, on the deposit of the first instalment of the compensation. From the language of various sub-sections of section 23 of the Act, it is clear that becoming a purchaser of the proprietary rights in the land is not equivalent to becoming the land-owner thereof whereby the rights of the previous land-owner are extinguished and the relationship of land-lord and tenant, already existing, ceases. It is only the certificate issued under sub-section (3) of section 23, which brings about that change. Hence the certificate has to bear the date on which it is actually issued and not the date of the deposit of the first instalment.

(Para 4)

Held, that the issuance of a certificate under section 23 of the Act is not a mere procedural formality or a ministerial act to be performed at any time after the deposit of the first instalment of the compensation. The form of the certificate shows that the Prescribed Authority has to satisfy himself whether the whole of the amount of the first instalment has been paid by the tenant within the time prescribed in sub-section (2) of section 23. The

amount of the compensation determined in respect of the land is also to be mentioned in the certificate. The Prescribed Authority cannot issue the certificate on its own initiative and thrust it on the tenant if he does not want it to perfect his title to the land, because the issuance of a certificate without his consent will deprive him of his right to exercise the option of abandoning the acquisition of the proprietary rights on the land, if he so desires, under section 24 of the Act. (Para 5)

Held, that rule 15 of Pepsu Tenancy and Agricultural Lands Rules (1958) does not go beyond the provisions of section 23 read with section 24 of the Act. The provisions of the rule are mandatory because of the consequences that follow with regard to making the tenant the land-owner of the land specified in the certificate and extinguishing the proprietary rights of the previous land-owner therein and the ceasing of the liability of the tenant to pay rent in respect thereof from the date of the certificate. If no certificate is issued, the previous land-owner continues to be the land-owner entitled to realise the rent from the tenant as if no change has taken place. The rights of the previous land-owner get extinguished in the land purchased by the tenant only from the date of the issue of the certificate and this interpretation of these provisions does not go counter to the intention of the legislature or the scheme of the Act. (Para 6)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of Prohibition or any other appropriate writ, order or direction be issued quashing the order of Respondents 2 and 3 dated 23rd January, 1969 and 20th March, 1968, respectively and restoring the order passed by the Assistant Collector First Grade (Prescribed Authority), dated 23rd September, 1966, and directing respondent No. 5 Assistant Collector, 1st Grade, Patiala, not to proceed with the trial of the suit filed by respondent No. 4 against the petitioner-tenant and the High Court be pleased to stay the trial of suit pending the writ petition in the High Court.

TIRATH SINGH, ADVOCATE, for the petitioner.

M. R. SHARMA, SR. DEPUTY-ADVOCATE GENERAL, PUNJAB, for respondents 1 to 3 and 5.

J. N. KAUSHAL, SR. ADVOCATE WITH MR. ASHOK BHAN, ADVOCATE, for respondent No. 4.

JUDGMENT

B. R. TULI, J.—(1) This judgment will dispose of C.Ws. Nos. 1583 of 1970, *Bachna v. State of Punjab and others*, 1584 of 1970, *Rala v. The State of Punjab and others*; 1585 of 1970, *Ram Partap v. The State of Punjab and others*; 1586 of 1970, *Jangir Singh v. The State of Punjab and others*; 1587 of 1970, *Ram Asra and others v. The State of Punjab and others*; 1588 of 1970, *Naurata Ram v. The State of Haryana and*

others; 1556 of 1970, *Sadhu Ram v. The State of Punjab and others*; 1542 of 1970, *Kaka Singh v. The State of Punjab and others*; 1543 of 1970, *Ajmer Singh v. State of Punjab and others*; 1544 of 1970 *Waryam Singh v. State of Punjab and others*; 1545 of 1970, *Raunq v. State of Punjab and others*; 1546 of 1970; *Sadhu Singh v. The State of Punjab and others*; and 1547 of 1970, *Chanan v. The State of Punjab and others*. The facts of these cases are similar and, therefore, it will be sufficient to give the facts of C.W. 1583 of 1970. The petitioner was a tenant of respondent 4 and he applied for the acquisition of proprietary rights of the lands under his tenancy under section 23 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter called the Act) to the Assistant Collector, First Grade (Prescribed Authority), Patiala, and he was granted the proprietary rights on December 31, 1959. He deposited the first instalment in the Treasury at Patiala on January 12, 1960, but did not supply the general stamp paper of rupee one for the issuance of a certificate to him under section 23(3) of the Act. He supplied the stamp-paper of rupee one with his application dated November 20, 1964, and the certificate was issued to him on November 29, 1964. The petitioner then made an application to the Prescribed Authority for making a correction in the date of issue of the certificate from November 29, 1964, to January 12, 1960, on which date he had deposited the first instalment of compensation. The Prescribed Authority felt that the date of the certificate could not be changed, but he added the words "valid from January 12, 1960 (the date of the payment of the first instalment)" considering that this addition to the certificate would comply with the spirit of law and meet the ends of justice. This order was passed on September 23, 1966. The landowner, respondent 4, filed an appeal against that order, which was accepted by the Collector, Patiala, on March 29, 1968 holding that there was no provision in the Act or the Rules made thereunder, which enabled the Prescribed Authority to make the addition in the certificate as he did. The petitioner then filed a revision petition, which was dismissed by the learned Financial Commissioner on January 23, 1969. The present writ petition has been filed against the orders of the Collector and the Financial Commissioner. Written statement has been filed on behalf of respondent 4, the landowner.

(2) The point of law debated before me is whether the certificate should bear the date on which the tenant pays the first instalment of the compensation determined for acquisition of the proprietary rights, or it should bear the date on which it is actually

issued. The relevant provisions of law are contained in sections 23 to 25 of the Act and rules 15 and 17, which are set out below—

“Section 23 : Determination of compensation for acquisition of proprietary rights.—

- (1) On receipt of an application under section 22, the prescribed authority, after satisfying itself that the applicant is entitled to acquire proprietary rights in any land under this Chapter, shall determine the compensation payable in respect thereof in accordance with the principles set out in section 26.
- (2) On determination of such compensation the prescribed authority shall by order in writing require the applicant to deposit the first instalment of the compensation as prescribed under section 27 in a Government treasury or a sub-treasury or with the prescribed authority and to produce before it a receipt for the same within a period of fifteen days from the date of the service of such order :

Provided that the prescribed authority may, on sufficient cause being shown, extend the period specified in this sub-section, so however that the aggregate period does not exceed one month.

- (3) Where the first instalment of compensation has been deposited in accordance with the provisions of sub-section (2), the prescribed authority shall issue to the applicant a certificate in the prescribed form declaring him to be the landowner in respect of the land specified in the certificate.
- (4) On and from the date of the issue of a certificate under sub-section (3) the proprietary rights of the landowner in the land specified in the certificate shall be deemed to have been extinguished and such proprietary rights shall vest in the applicant free from all encumbrances and as from such date the applicant shall cease to be liable to pay any rent in respect of such land to the landowner:

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Provided that—

- (a) the amount of compensation payable by the applicant shall be a first charge on such land;
 - (b) the amount of any encumbrance existing on such land on the date of the issue of the certificate shall be a valid charge on the amount of compensation payable by the applicant under this Act.
- (5) Every certificate issued under sub-section (3) shall be conclusive evidence of the acquisition by the applicant of proprietary rights in the land specified therein and notwithstanding anything contained in the Indian Registration Act, 1908 (XVI of 1908), no such certificate shall be required to be registered under that Act.

"Section 24 : Tenant may abandon his intention to acquire proprietary rights.—

- (1) Any person who is entitled to acquire proprietary rights in respect of any land under this Chapter may at any time after the amount of the first instalment of compensation is deposited under sub-section (2) of section 23 but before a certificate is issued to him under sub-section (3) of that section make a declaration in writing in the prescribed manner before the prescribed authority that he has abandoned his intention to acquire proprietary rights in such land.
- (2) Where any declaration is made under sub-section (1), the amount of the first instalment of compensation, deposited by the tenant under sub-section (2) of section 23 shall be refunded to him.

"Section 25 : Forfeiture of right to acquire proprietary rights.—

If any person upon whom the right to acquire proprietary rights is conferred under this Chapter fails to comply with any order made under sub-section (2) of section 23, he shall forfeit his right to acquire such proprietary rights.

"Rule 15 : Form of certificate.

- (1) A certificate to be given by the prescribed authority under sub-section (3) of section 23 of the Act shall be in Form VI-A and shall be issued to the tenant on general stamp paper of the value of one rupee to be furnished by him.
- (2) The prescribed authority shall prepare three extra copies of such certificate, one to be placed on the file, the second to be sent to the landowner, and the third to be sent to the Patwari concerned who shall make mutation entries in accordance with the certificate which shall, for purposes of attestation of the mutation and charging of fees, be treated as if it were a decree of a revenue court.

"Rule 17 : Annual instalments for payment of compensation.

- (1) The compensation payable under section 26 of the Act shall, if it is not paid voluntarily by the tenant in lump sum, be paid,—
 - (a) where it does not exceed two hundred rupees, in two annual instalments;
 - (b) where it exceeds two hundred rupees but does not exceed five hundred rupees, in three annual instalments;
 - (c) where it exceeds five hundred rupees but does not exceed seven hundred and fifty rupees, in four annual instalments;
 - (d) where it exceeds seven hundred and fifty rupees but does not exceed one thousand rupees, in five annual instalments; and
 - (e) where it exceeds one thousand rupees, in six annual instalments.
- (2) Ordinarily all instalments referred to in sub-rule (1) shall be equal in amount up to a rupee, the balance, if any, being payable with the last instalment."

(3) On the combined reading of these provisions, it seems to be evident that the intention of the legislature is that a tenant has to make an application for acquiring proprietary rights in any land under his tenancy. On receipt of his application, the compensation payable by him to the landowner is to be determined by the Prescribed Authority. This compensation is payable in instalments depending upon the amount payable, as provided in rule 17, the maximum number of instalments being six in case the amount of compensation exceeds Rs. 1,000. The instalments payable are annual. The first instalment has to be paid and receipt evidencing the payment has to be produced before the Prescribed Authority within a period of 15 days from the date of the service of the order, which time can be extended to one month. The duty has been cast on the Prescribed Authority to issue the certificate to the tenant in the prescribed form declaring him to be the land-owner in respect of the lands described in the certificate after the first instalment of compensation has been deposited in accordance with the provisions of sub-section (2) of section 23. Under rule 15, the tenant has to furnish a general stamp paper of rupee one to enable the Prescribed Authority to issue the necessary certificate to him. Three more copies of the certificate have been directed to be made, one of which is to be retained on the file, the second one is to be sent to the land-owner and the third one is to be sent to the Patwari, who is to enter the mutation in accordance therewith. The proprietary rights of the land-owner in the lands specified in the certificate shall stand extinguished on or from the date of the issue of the certificate and from that date the tenant ceases to be liable to pay any rent in respect of such land to the land-owner. The certificate issued under sub-section (3) of section 23 of the Act shall constitute conclusive evidence of the acquisition of proprietary rights in the lands specified therein by the tenant, but no registration of that certificate is required under the Indian Registration Act. Under section 24 of the Act, the tenant has been given the option of making a declaration after depositing the first instalment of the compensation and before the certificate is issued to him that he has abandoned his intention to acquire proprietary rights in the land and on that declaration being made the amount of the first instalment of the compensation deposited by him is to be refunded. From section 24, therefore, it is abundantly clear that the certificate has to bear the date of its actual issue and not the date of the deposit of the first instalment. If that were not so, the provisions of section 24 of the Act will become redundant.

Rule 15 casts a duty on the tenant to furnish a general stamp paper of rupee one to enable the Prescribed Authority to issue to him the certificate. This requirement is necessary in view of the provisions of section 24 of the Act as the tenant will be issued the certificate when he desires it to be issued to him, so that his right to exercise the option under section 24 of the Act is not lost by the issuance of a certificate to him by the Prescribed Authority simultaneously with the date of deposit of the first instalment of compensation by him. The tenant has not only to deposit the first instalment within 15 days of the communication of the order to him but has also to produce the receipt for that deposit before the Prescribed Authority within 15 days of the date of the communication of the order. Unless the receipt evidencing the deposit is produced before the Prescribed Authority, he cannot come to know whether the amount of first instalment has been deposited or not, so that any tenant who is anxious to acquire the proprietary rights should pay the first instalment of compensation and produce the receipt evidencing payment within 15 days before the Prescribed Authority along with a general stamp paper of rupee one to enable the Prescribed Authority to issue the certificate to him. It is the certificate that declares the tenant to be the land-owner of the land specified therein and it is from the date of the certificate that the rights of the previous land-owner are extinguished and the tenant ceases to be liable for rent to the land-owner. Again it is the certificate alone which becomes the conclusive evidence of the acquisition of the proprietary rights by the tenant, that is, it is only on the basis of that certificate that the tenant can assert himself to be the land-owner of the land of which he has acquired proprietary rights. From all these provisions it is evident that the issuing of a certificate is not a mere procedural formality or a ministerial act to be performed at any time after the deposit of the first instalment of compensation. The certificate will have to be issued by the Prescribed Authority within the shortest time possible from the time the general stamp paper of rupee one is furnished to him and he is satisfied that the first instalment of compensation has been deposited by the tenant and receipt therefor produced before him within the time prescribed in sub-section (2) of section 23, that is, 15 days of the date of the communication of the order, or 30 days in the aggregate if on sufficient cause being shown it is extended by the Prescribed Authority. The deposit of the first instalment and the production of the receipt therefor will only mean that the tenant has accepted to be the purchaser of the proprietary rights but he cannot

be said to have become the landowner in respect of the land the proprietary rights of which he has been allowed to purchase, nor can the proprietary rights of the previous land-owner be said to have been extinguished on the deposit of the first instalment of the compensation. Unlike the provisions of section 18(4) of the Punjab Security of Land Tenures Act, 1953 (hereinafter called the Punjab Act), there is no provision in section 23 of the Act declaring that the tenant shall become land-owner in respect of the land, the proprietary rights of which he has acquired, on the deposit of the first instalment of the compensation. In spite of the fact that the Punjab Act had been enacted earlier, the Pepsu Legislature thought of providing differently in section 23 of the Act. The learned counsel for the petitioners cannot derive any assistance from the judgment of a Division Bench of this Court in *Jot Ram v. Shri A. L. Fletcher and others*, (1), as that case relates to section 18 of the Punjab Act, which cannot be applied to the present cases which are under section 23 of the Act, the language of the two sections being different.

(4) From the language of various sub-sections of section 23 of the Act, it is clear that becoming a purchaser of the proprietary rights in the land is not equivalent to becoming the landowner thereof whereby the rights of the previous land-owner are extinguished and the relationship of land-lord and tenant, already existing, ceases. It is only the certificate issued under sub-section (3) of section 23, which brings about that change.

(5) I also find no substance in the submission of the learned counsel for the petitioners that the issuing of a certificate is a purely ministerial act and the Prescribed Authority has not to apply his mind at that stage. The form of the certificate shows that he has to satisfy himself whether the whole of the amount of the first instalment has been paid by the tenant within the time prescribed in sub-section (2) of section 23. The amount of the compensation determined in respect of the land is also to be mentioned in the certificate. The Prescribed Authority cannot issue the certificate on its own initiative and thrust it on the tenant if he does not want it to perfect his title to the land, because the issuance of a certificate without his consent will deprive him of his right to exercise the option of abandoning the acquisition of the proprietary rights in the land, if he so desires, under section 24 of the Act. I am, therefore, of

(1) I.L.R. (1967) 1 Pb. & Hr. 597=1966 P.L.R. 787.

the opinion that the certificate issued under sub-section (3) of section 23 has to bear the date of its actual issue and not the date of the payment of the first instalment of the compensation nor can it be made valid from that date because it is the certificate that declares the tenant to have become the land-owner of the land in which the proprietary rights of the previous land-owner are extinguished and the relationship of land-lord and tenant previously existing between the land-owner and the tenant is terminated from the date of the certificate.

(6) It has been argued by the learned counsel for the petitioners that rule 15 goes beyond the provisions of section 23 of the Act and cannot be allowed to over-ride the provisions of that section. I regret my inability to agree to this submission. Section 52 of the Act authorises the State Government to make rules for carrying out the purposes of the Act and in particular to prescribe the form in which any certificate may be issued under the Act, and the fees to be paid in respect of any application or other proceeding under the Act. Rules can also be framed in respect of any other matter which is or may be prescribed under the Act. As I have said above, the certificate has to be issued to the tenant at his request after he has complied with the provisions of sub-section (2) of section 23 in order not to deprive him of the right given to him by the legislature under section 24 of the Act. The requirement with regard to the furnishing of a general stamp paper of rupee one for the issuance of the certificate only emphasises that it is for the tenant to move in the matter and show his willingness to receive the certificate. He will have to pay rupee one for the purchase of stamp paper which is only a nominal fee for the issuance of the certificate and this fee can be prescribed by the Rules. Since the option under section 24 of the Act can be exercised by the tenant only till the date of the issue of the certificate, it is for him to decide when he wishes to have the certificate. For all these reasons, I hold that rule 15 does not go beyond the provisions of section 23, read with section 24, of the Act, nor can its provisions be said to be only directory and not mandatory. The provisions are mandatory because of the consequences that follow with regard to making the tenant the land-owner of the land specified in the certificate and extinguishing the proprietary rights of the previous land-owner therein and the ceasing of the liability of the tenant to pay rent in respect thereof from the date of the certificate. If no certificate is issued, the previous land-owner continues to be the land-owner

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entitled to realise the rent from the tenant as if no change has taken place. The rights of the previous land-owner get extinguished in the land purchased by the tenant only from the date of the issue of the certificate and this interpretation of these provisions does not go counter to the intention of the legislature or the scheme of the Act.

(7) For the reasons given above, I find no merit in these writ petitions, which are dismissed but without any order as to costs as the point of law debated was not free from difficulty.

B.S.G.

APPELLATE CIVIL

Before D. S. Tewatia, J.

SANATAN DHARAM COLLEGE,—Appellant

versus

THE PUNJAB UNIVERSITY AND OTHERS,—Respondents.

Second Appeal From Order No. 12 of 1970.

August 18, 1970.

Punjab University Act (VII of 1947)—Section 27—College securing affiliation of Punjab University—Conditions of affiliation complied with—Such college—Whether has a right to the continued affiliation—Disaffiliation by the University for mala fide reasons—Civil Courts—Whether have jurisdiction to declare the order as void—Order passed by the University at place A and conveyed to the college at place B—Courts at place B—Whether can entertain a suit for declaration of the order being void.

Held, that once a college is granted affiliation by the Punjab University, a right is acquired by the college for the continued affiliation, so long as the conditions of affiliation are continued to be complied with by the college. If the said affiliation is determined by the University for *mala fide* reasons, then even if the requisite procedure indicated by Punjab University Act, 1947, is followed, the final order of disaffiliation and the resolution of the Syndicate and Senate of the University will be void and illegal. Since the right so acquired is a civil right whether the same is conferred by a statute or existed under the general or customary law, the civil Court has jurisdiction to decide as to whether the order taking away that right has been passed firstly in accordance with the statutory provision and secondly for violating the terms and conditions of the affiliation and if it is found that though the procedure indicated in the statute has been complied with but the said order has been passed not as a result of non-compliance of any terms and