

LETTERS PATENT APPEAL

Before Harbans Singh C.J. and Gurdev Singh, J.

SADHU,—Petitioner.

versus.

THE STATE OF PUNJAB ETC.,—Respondents.

Letters Patent Appeal No. 628 of 1970.

January 4, 1971.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Sections 22, 23 and 24—Pepsu Tenancy and Agricultural Lands Rules (1958)—Rule 15—Tenant on agricultural land applying for purchase of the land under his tenancy—Such tenant depositing first instalment of compensation after the grant of his application—Certificate of purchase issued later—Proprietary rights in the land—Whether vest in the tenant from the date of the payment of the first instalment or from the date of the issue of the certificate.

Held, that after the application by a tenant under section 22 of Pepsu Tenancy and Agricultural Lands Act, 1955, for acquisition of proprietary rights of the land under his tenancy is granted under section 23 of the Act, it is open to the tenant to deposit the first instalment or not to do so. If he deposits the first instalment within the time prescribed, he does not automatically acquire the proprietary rights. He can exercise his option to abandon his intention to acquire the proprietary rights till he applies for the certificate of purchase and gets it. When the certificate is granted and a copy of the same is sent, as provided under rule 15 of the Pepsu Tenancy and Agricultural Lands Rules, 1958, to the landowner, it is only then that the landowner has the information that the tenant has unequivocally exercised his option to acquire the proprietary rights and that he cannot withdraw the first instalment or any subsequent instalment of the compensation paid by him. Hence the title and the proprietary rights of the landowner in the land get extinguished and the same get vested in the tenant simultaneously on the issue of the certificate and not from date of the payment of the first instalment of the compensation by the tenant. (Para 8).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Bal Raj Tuli, passed in Civil Writ No. 1546 on 7th of August, 1970.

TIRATH SINGH, ADVOCATE for the appellants.

H. L. SIBAL, ADVOCATE WITH R. C. SETIA, ASHOK BHAN, ADVOCATES, for the respondents.

JUDGMENT.

(1) This judgment shall dispose of L.P.A. Nos : 628 to 640 of 1970, as they arise out of the same judgment of the learned Single Judge.

(2) The only point involved in these Letters Patent Appeals is, whether the title of a tenant, who is allowed to purchase land under his tenancy, on an application being made under section 22 and granted under section 23 of the Pepsu Tenancy and Agricultural Lands Act, 1955, (hereinafter referred to as the Act) would be with effect from the date on which he deposits the first instalment of Compensation in the application for the acquisition of proprietary rights granted by the Assistant Collector First Grade or from the date the certificate is issued to him under the provisions of sub-section (3) of section 23 of *the Act read with rules 15 and 17 framed under the Act.

(3) under section 23 of the Act, when an application is made under section 22 by a tenant to the Prescribed Authority, the Prescribed Authority satisfies itself that the applicant is entitled to acquire proprietary rights and then proceeds to determine the compensation payable. After determining such compensation, the instalments to be paid are determined and then the tenant is required, by an order in writing, to deposit the first instalment within fifteen days, which period can be extended to one month. Sub-section (3) of section 23 of the Act then lays down as follows:—

“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) In the present case the order in writing was passed on 31st December, 1959, and the first instalment was deposited on 12th January, 1960. No certificate was issued thereafter till 29th November, 1964. The reason was that under rule 15 a certificate, which is to be given by the Prescribed Authority under section 23(3) of the Act, is to be issued to the tenant on a general stamp paper of the value of rupee one to be furnished by him. The requisite stamp paper was supplied only on 20th November, 1964, and the certificate was issued thereafter as the stated above. For the period up to 29th November, 1964, the landowner claimed rent from the tenant. The Authority under the Act held that the landowner could claim the rent or *batai*, because the title of the landowner in the land was extinguished and the proprietary rights acquired by the tenant became effective only from the date of the certificate. This led to the writ (Civil Writ

No. 1583 of 1970) filed by the tenant urging that it was the duty of the authorities to issue a certificate under sub-section (3) of section 23 of the Act and that even if the same was issued subsequently, the title would date back to the date of the deposit of the first instalment. This was negated by the learned Single Judge and hence these appeals.

(5) Unlike the provisions of section 18 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, the title of the Tenants is not automatic on deposit of the first instalment. The title of the tenant starts with effect from the date of the certificate. It was urged that the issue of certificate in view of the provisions of sub-section (3) of section 23 of the Act, is merely a clerical or ministerial act.

(6) This contention does not appear to be correct in view of the provisions of section 24 of the Act, which runs as follows :—

- (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 subsection (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."

(7) Section 24 thus gives option to the tenant, even after he has deposited the first instalment of compensation, to abandon his intention to acquire the proprietary rights and this option can be exercised by him before a certificate is issued to him under sub-section (3) of section 23 of the Act. No time limit is placed for the issuance of the certificate either under the Act or under the Rules. It is, therefore, clear that it is for the tenant to choose his own time to make a request for the certificate being granted to him. So long as he does

not get a certificate, he can exercise his option to abandon his intention to acquire the proprietary rights and on his so doing the amount of the first instalment of compensation deposited by him is to be refunded. Rule 15 further provides that the original certificate, when issued, is to be given to the tenant and three copies have to be prepared. One of the copies is sent to the landowner. This is the only way in which the landowner comes to know, first, that the tenant has deposited the first instalment of the compensation and, secondly, that he has irrevocably exercised his right to acquire the proprietary rights and has not taken the advantage of the provisions of section 24 of the Act to abandon his intention to do so. The learned counsel for the appellants could not point out any other provision of law by which the landowner comes to know that the first instalment has been deposited and that he is entitled to withdraw the same.

(8) It is thus clear from the provisions of the Act and Rules framed thereunder that—

- (1) after the application for acquisition of proprietary rights is granted, it is open to the tenant to deposit the first instalment or not to do so ;
- (2) if he deposits the first instalment within the time prescribed, he does not automatically acquire the proprietary rights as is the case under section 18 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act ;
- (3) till he applies for the certificate and gets it, he can exercise his option to abandon his intention to acquire the proprietary rights ;
- (4) till a certificate is granted and a copy of the same is sent, as provided under rule 15, to the landowner, the latter has no information that the tenant has unequivocally exercised his option to acquire the proprietary rights and that he can withdraw the first instalment or any subsequent instalment, already paid ; and
- (5) the title re the proprietary rights of the landowner in the land gets extinguished and the same gets vested in the tenant simultaneously on the issue of the certificate.

(9) From the above, it follows that the option being that of the tenant, he can apply for getting the certificate at any time he likes, after payment of the first instalment. The grant of the certificate is not a mere clerical act. It becomes ministerial or clerical act only after the tenant exercises his option to get the certificate by making an application and putting in a one-rupee stamp paper.

(10) The certificate, therefore, has to bear the date on which it is issued and it is only that date from which the tenant gets vested with the proprietary rights and prior to that the proprietary rights continue to be vested in the landowner and the relationship between the parties remains that of the landowner and the tenant.

(11) Another point taken before the learned Single Judge and before us was that rule 15, which provides for a stamp paper to be supplied by the tenant goes beyond section 23(3) of the Act, which imposes a duty on the authorities to issue a certificate on the receipt for the first instalment having been produced before them.

(12) We are afraid, there is no force in this contention, because in view of the provisions of section 24 of the Act, which gives the tenant an option to abandon his intention to acquire proprietary rights even after depositing the first instalment, it is abundantly clear that it is for the tenant to decide when he would like to have the certificate. Provision for supplying one-rupee stamp paper in the Rules, before the certificate is granted, is, therefore, quite consistent with the provisions of section 24 of the Act. The supply of the stamp paper would indicate the decision of the tenant finally to acquire the proprietary rights.

(13) For the reasons given above, we feel that there is no force in these appeals and the same are hereby dismissed and the judgment of the learned Single Judge is confirmed. In the peculiar circumstances of the case, there will be no order as to costs.

GURDEV SINGH, J.—I agree.

B.S.G.