APPELLATE CIVIL

Before O. Chinnappa Reddy, J.

BIHARI LAL,—*Appellant.*

versus

COL. HIS HIGHNESS RAJA SIR HARINDER SINGH BRAR and others,—*Respondents.*

Regular First Appeal No. 13 of 1966.

February 7, 1977

Punjab Security of Land Tenures Act (X of 1953)—Section 18—Land Acquisition Act (1 of 1894)—Sections 4(1), 16 and 17(1)—Application by a tenant for purchase of land under section 18—Such tenant—When becomes an owner—Government acquiring the land during the pendency of such application—Apportionment of compensation between tenant and the landowner—Extent of—Stated.

Held, that it is clear from the provisions of S. 18 of the Punjab Security of Land Tenures Act, 1953 that a tenant be considered to become the owner of the Land by the mere filing of an application under Section 18(1). He may abandon the application at any time. The application may be dismissed for non-prosecution. The purchase price determined by the Assistant Collector may be too high for the tenant to buy the land. He may not be able to deposit the first instalment within time. Thus, the tenant will not be considered to be the owner of the land until he deposits the first instalment of the purchase price. (Para 2).

Held, that the Punjab Security of Land Tenures Act itself appears to afford some guidance in the matter of apportionment of compensation between the landlord and the tenant when during the pendency of the latter's application for purchase, the land is acquired by the Government. Section 18(3) prescribes the purchase price to be paid by the tenant at three-fourths of the value of the land as determined by Section 18(2). It means that the interest of the landowner is assessed at three-fourths and the interest of the tenant is assessed at one-fourth. The value of the land as determined under section 18(2) may be more or less than the value of the land on the date of the notification of acquisition. But that makes no difference. What is important is that the interests of the landowner and the tenant are fixed at three-fourths and one-fourth of the value of the land. (Para 3).

Regular First Appeal from the order of the Court of Shri F. S. Gill, 1st Additional District Judge, Gurgaon (with powers of Land

acquisition Judge) dated the 29th October, 1965 allowing and ordering that the petitioner be paid the sum of Rs. 26,721, the compensation amount of the land in dispute, and leaving the parties to bear their own costs.

H. L. Sarin, Advocate with M. L. Sarin, Advocate, *for the appellant.*

K. C. Puri, Advocate with R. C. Puri, Advocate, *for respondent No.* 1.

S. P. Jain, Advocate with Bipin Kaushal, Advocate, *for Respondent Nos.* 2 *and* 3.

JUDGMENT

O. Chinnappa Reddy, J.

(1) The appeal concerns the apportionment of the compensation awarded in respect of an extent of twenty-five Kanals and two Marlas of land acquired by the Government of Haryana under the provisions of the Land Acquisition Act pursuant to a notification issued on 3rd August, 1961, under section 4 of the Act. The appellant was the tenant and the respondent was the owner of the land prior to acquisition. Six months before the date of the notification, the appellant-tenant, on 3rd February, 1961, had applied to the Assistant Collector for the purchase of certain land, including the present acquired land, of which he was the tenant, under section 18 of the Punjab Security of Land Tenures Act, 1953. On 4th March, 1963, Assistant Collector allowed the application and determined the price to be paid by the tenant. On an appeal by the present respondent, the Collector upheld the right of the tenant to purchase the land, but remanded the matter to the Assistant Collector for redetermination of the price to be paid by the tenant. On 20th September, 1968, the Assistant Collector redetermined the price of the land after excluding the acquired land. An appeal preferred by the tenant claiming that he was also entitled to purchase the acquired land, which really meant that he was entitled to the compensation awarded for the acquisition of the land, was accepted by the Commissioner and the matter is now said to be awaiting final decision in a writ petition in the High Court. Neither of the parties desired that the writ petition might be heard along with this appeal though whatever I say here is bound to affect the result of the writ petition. To continue the narration of facts, the Land Acquisition Collector, in the meanwhile took possession of the land on 4th October, 1961, apparently

under section 17(1) of the Land Acquisition Act. He made the award on 14th October, 1961 determining the compensation and also holding that the appellant-tenant was entitled to the whole of the compensation by virtue of his right to purchase the land under section 18 of the Punjab Security of Land Tenures Act. At the instance of the respondent-landowner a reference was made to the learned Additional District Judge, Gurgaon, who held that the tenant did not become the owner of the land until the Assistant Collector made an order and as the land had been acquired in the meanwhile, the tenant was not entitled to any compensation. The tenant has appealed.

(2) Shri Sarin, learned counsel for the appellant, submitted that the tenant should be considered to have become the owner of the land as soon as he filed an application under section 18 of the Punjab Security of Land Tenures Act, if he fulfilled the qualifications prescribed by sub-section (1) of section 18. This submission is without substance. While section 18(1) prescribes the qualifications which a tenant seeking to purchase land which is in his tenancy has to fulfil, section 18(2) requires him to make an application to the Assistant Collector, who shall then determine the value of land on the basis of the average price prevailing during the ten years prior to the application. Section 18(3) stipulates that the purchase price shall be three-fourth of the value of the land so determined. Section 18(4)(a) provides that the purchase price shall be paid in a lump sum or in six monthly instalments. S. 18(4)(b) declares that as soon as the purchase price or the first instalment is deposited, the tenant shall be deemed to have become the owner of the land. It is clear from these provisions that a tenant cannot be considered to become the owner of the land by the mere filing of an application under section 18(1). He may abandon the application at any time. The application may be dismissed for non-prosecution. The purchase price determined by the Assistant Collector may be too high for the tenant to buy the land. He may not be able to deposit the first instalment within time. The tenant will be considered to be the owner of the land not until he deposits the first instalment. That is expressly provided in Section 18(4). In the present case, the Assistant Collector allowed the application under section 18(1) on 4th March, 1963 only and the tenant could not possibly be considered to have become the owner by 3rd August, 1961, the date of the notification under section 4(1) of the Land Acquisition Act. Sections 16 and 17(1) of the Land Acquisition Act provide that on the Collector

taking possession of the land, it shall vest in the Government free of all encumbrances. Here, the Collector took possession of the land on 4th October, 1961. Therefore, the land vested in the Government absolutely on that date and from that date both landowner and tenant ceased to have any interest in the land. After the vesting of the land in the Government, there was no question of the Assistant Collector making an order under section 18(1) of the Punjab Security of Land Tenures Act in respect of that land. To that extent, the application under section 18(1) must be considered to have suffered statutory abatement.

(3) That the tenant had not become the owner of the land by the date of acquisition does not fully solve the problem before me. His tenancy rights require to be valued. The appellant was not a permanent tenant. He was not an occupancy tenant. But he was not a tenant without rights. He had far-reaching rights under the Punjab Security of Land Tenures Act. He could not be evicted from the land except upon the grounds specified in Section 9 of the Act. He could purchase the land if he fulfilled the qualifications prescribed by section 18(1). His position was not, therefore, that of a mere tenant at will or a tenant for a fixed term. In many respects his position was inferior to that of a permanent or occupancy tenant. But, in one respect, in respect of the right to purchase given to him by section 18, he was in a better position than a permanent or occupancy tenant. How then, to put a value upon his rights? Where the tenant is an occupancy tenant, compensation is generally apportioned between landlord and tenant, in Allahabad, in the ratio of 10:6,—*vide Sham Lal* v. *Collector of Agra*, (1). In Madras it is apportioned in the ratio of 2:3,—*vide Bommadevasa Venkata Narasimha Naidu* v. *Subbarayadu* (2). In Punjab it is apportioned roughly in the ratio which the malikana paid by the tenant to the landlord bears to the land revenue,—*vide Ram Kishan* v. *Jori Ram* (3). Where the tenant is a permanent tenant, the rule generally adopted is to give the landlord, the capitalised value of the rent and some thing more on account of the right of reversion vested in him and to give the balance to the permanent tenant,—*vide Th. G. D. Ji* v. *Maharaj, Th. R. Ji Maharaj* (4). However, as I said,

(1) I.L.R. 55 All. 897.
(2) I.L.R. 36 Madras 395.
(3) A.I.R. 1931 Lah. 649.
(4) 1963 A.L.J. 587.

the tenant here is neither a permanent tenant nor an occupancy tenant. The decisions, therefore, are of assistance in but, a very little way. But, I think the Punjab Security of Land Tenures Act itself appears to afford some guidance in the matter. Section 18(3) prescribes the purchase price to be paid by the tenant at three-fourths of the value of the land as determined by section 18(2). It means that the interest of the landowner is assessed at three-fourths and the interest of the tenant is assessed at one-fourth. The value of the land as determined under section, 18(2) may be more or less than the value of the land on the date of the notification of acquisition. But that makes no difference. What is important is that the interests of the landowner and the tenant are fixed at three-fourths and one-fourth of the value of the land. On that basis, I direct the apportionment of the compensation between the appellant and the first respondent in the ratio of 1:3. The appeal is allowed to that extent only. There will be no order as to costs.

N. K. S.

MISCELLANEOUS CRIMINAL

Before S. C. Mital, J.

NANAK PARTAP SINGH (CAPTAIN) and others,—*Petitioners.*

versus

THE STATE OF PUNJAB and another—*Respondents.*

Criminal Misc. No. 3049-M of 1976.

February 14, 1977.

Code of Criminal Procedure (Act 2 of 1974)—Sections 397(2) and 482—Interlocutory order summoning an accused—Inherent powers of the Court—When can be involved to quash interlocutory orders.

Held that (1) Where interference by revisional Court with an interlocutory order is prohibited by the Code of Criminal Procedure 1973, invocation of the inherent power under Section 482 of the Code to set aside the order would defeat the object of the Code. Hence the inherent power be not invoked in such a case.

(2) By and large an accused person comes into the picture when he is summoned by a Court by passing an interlocutory order. Subsequently also interlocutory orders may be passed against him. The passing of such order or orders