

CIVIL MISCELLANEOUS

Before S. S. Dulat, and J. S. Bedi, J.

RAM PARTAP,—*Petitioner.*

versus

FINANCIAL COMMISSIONER, PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 902 of 1962.

Punjab Security of Land Tenures Act (X of 1953)—Ss.9-A and 10-A and Rule 18 framed under S.27—Tenant of a big land-owner evicted under S.9 (1) (i) occupying more than 5 standard acres of land as owner and as tenant under other landlords—Whether entitled to allotment of land out of surplus area under section 10-A.

Held, that the intention behind section 9-A of the Punjab Security of Land Tenures Act, 1953, is that a tenant should not be left landless. Section 10-A authorises the State Government to use the surplus area for the resettlement of evicted tenants but the manner of resettlement and the scale on which allocation of surplus land is to be made are for obvious reasons left to be regulated by rules. Those rules lay down in the form of a Schedule the scale for various classes of tenants

1964

August, 26th.

and in its broad aspect this Schedule is perfectly reasonable, for it ensures that every tenant will have in his possession at least five standard acres of land. If the tenant is ordered to be evicted from his entire holding, an area of five standard acres would be allotted to him from the surplus land but if, on the other hand, the tenant is still to retain some land in his own right, then only such allocation from the surplus area will be made as will total his holding to five standard acres and, of course, if he already has five standard acres or more in his possession in spite of the eviction order, then the allocation to be made from the surplus area will be nil. This does not mean that he has not been accommodated as is required by section 9-A but that in view of his holding no further allocation from out of the surplus area is in his case necessary.

Case referred by the Hon'ble Mr. Justice S. S. Dulat on 14th April 1964 to a larger Bench for decision of the important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat, and the Hon'ble Mr. Justice J. S. Bedi on 26th August, 1964.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari or any other appropriate writ, order or direction be issued quashing the orders, dated the 26th September, 1961, 31st October, 1961 and 7th February, 1962 passed by respondents Nos. 1 to 3, respectively.

MR. N. L. DHINGRA AND H. S. WASU, ADVOCATES for the Petitioners.

S. K. KAPUR, ADVOCATE-GENERAL, C. L. AGGARWAL, P. N. AGGARWAL AND M. R. SHARMA, ADVOCATES, for the Respondents.

ORDER

Dulat, J.

DULAT, J.—This petition under article 226 of the Constitution challenging the legality of a decision of the Financial Commissioner under the Punjab Security of Land Tenures Act arises out of the following facts which are of course, not in dispute. The petitioner, Ram Partap, was a tenant under more than one land-owner and one of those land-owners named Surja Ram was a big land-owner within the meaning of the Punjab Security of Land Tenures Act. Surja Ram proceeded to reserve for himself the bulk of the land in the occupation of the petitioner as tenant and he later applied for the petitioner's eviction under section 9(1)(i) of the Punjab Security of Land Tenures Act which entitles a land-owner to evict a tenant from the reserved area. That application

naturally succeeded and an order of eviction was made. The petitioner then asked for relief under section 9-A of the Act which provides that a tenant ordered to be ejected under clause (i) of sub-section (1) of section 9 will not be dispossessed "unless he is accommodated on a surplus area in accordance with the provisions of section 10-A or otherwise on some other land by the State Government." It was found by the learned Collector that in spite of the eviction order and even if it was executed, the petitioner would be still in occupation of more than 5 standard acres which he was holding partly as owner and partly as tenant under other land-owners and in view of the rules framed by the State Government under section 27 of the Security of Land Tenures Act, the petitioner was not entitled to any further allocation of surplus area. The result was that the learned Collector ordered the petitioner's dispossession from the land reserved by Surja Ram. The petitioner then approached the Commissioner, who felt that the petitioner was entitled to relief and who, therefore, recommended the case to the Financial Commissioner for revision. The learned Financial Commissioner was, however, unable to accept that view and he agreed on the other hand with the view of the learned Collector, and, in the result, the petitioner's revision petition was dismissed. It is against the decision of the learned Financial Commissioner that the present writ petition is directed. It came before me sitting alone in the first instance, but I thought that it had better be decided by a larger Bench in view of the conflicting opinions entertained by different Financial Commissioners. The present Financial Commissioner, Mr. Saroop Krishan, when deciding this case, followed the view adopted by Mr. B. S. Grewal, Financial Commissioner, in *Gurmej Singh and another v. Manmohan Chander and another* (1). It appears, however, that another Financial Commissioner, Mr. Kahlon had in an earlier case *Prithi Singh and another v. Kishnu* (2), taken a somewhat different view.

Section 9 of the Punjab Security of Land Tenures Act does entitle a landlord to evict a tenant in occupation of the area reserved by the land-owner. Section 9-A, however, provides that actual dispossession of such a tenant will not be permitted "unless he is accommodated on a

Ram Partap
v.
Financial Commissioner,
Punjab
and others

Dulat, J.

(1) 1961 L.L.T. 73.

(2) 1958 L.L.T. 23.

Ram Partap
 v.
 Financial Com-
 missioner,
 Punjab
 and others

 Dulat, J.

surplus area in accordance with the provisions of section 10-A or otherwise on some other land by the State Government". Section 10-A authorises the State Government "to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of section 9". Neither section 9-A nor section 10-A lays down any scale according to which allocation of land from out of the surplus area is to be made to evicted tenants. The only indication in section 9-A is in the first proviso which says that "if the tenant concerned is the tenant of a small land-owner, he shall be allowed to retain possession of his tenancy to the extent of five standard acres, including any other land which he may hold as tenant or owner, until he is so accommodated on a surplus area or otherwise". This does not really indicate the extent of the allocation of land to be made to him and, in any case, it is not applicable in the present case because the petitioner is a tenant of a big land-owner. It is not really surprising that the Legislature, when enacting the Punjab Security of Land Tenures Act, was not in a position to lay down any scale for the allocation of land out of the surplus area, for the Legislature did not and could not in the nature of things know at that time what the extent of the surplus area would be nor, of course, the extent of the demand for allocation of land by evicted tenants. All that the Legislature, therefore, did was to provide by section 27 that the "State Government may by notification in the official Gazette make rules for carrying out the purposes of this Act". The State Government has made rules in this connection and rule 18 of the relevant Rules authorises the allocation of surplus area to tenants entitled to resettlement according to the scale mentioned in Schedule C. This Schedule, broadly speaking, provides that if a tenant is to be evicted altogether from his entire holding, then land up to five standard acres should be allotted to him from out of the surplus area but in case he is in spite of the eviction order, in occupation of some land either as a land-owner or as a tenant, then allocation is to be made only to the extent sufficient to make up a total of five standard acres. It follows and the Schedule expressly makes a provision that if a tenant in spite of the eviction order still has in his occupation land measuring five standard acres or more, then no allocation of any surplus area need be made to him. It was in view of this provision of the

Schedule that the learned Financial Commissioner held that the petitioner, who does hold more than five standard acres of land apart from the land from which he is ordered to be evicted, cannot be given any land from out of the surplus area. This conclusion is admittedly in accordance with the provisions of rule 18 and Schedule C to the Rules. Mr. Dhingra for the petitioner, in the circumstances, contends that Schedule C to the Rules is in conflict with the Punjab Security of Land Tenures Act, section 9-A, and the provisions of the Schedule must, therefore, be ignored and the direction contained in section 9-A must be obeyed. The argument is that section 9-A directs that a tenant to be evicted from his holding under section 9(1)(i) of the Act must be accommodated on surplus area while Schedule C to the Rules made under the Act purports to provide that such a tenant in certain circumstances need not be accommodated on surplus area and there is thus a conflict between the statute and rule 18. Actually, however, there is no conflict provided the provisions of the statute and the rules are understood reasonably. Section 9-A undoubtedly contains a direction that a tenant like the petitioner, who is ordered to be evicted because of section 9, subsection (1), clause (i), should not be dispossessed unless accommodation is provided for him on surplus area in accordance with section 10-A or otherwise on some other land. The intention behind this provision is clear enough and it is that a tenant should not be left landless. Section 10-A authorises the State Government to use the surplus area for the resettlement of evicted tenants but the manner of resettlement and the scale on which allocation of surplus land is to be made are for obvious reasons left to be regulated by rules. Those rules lay down in the form of a Schedule the scale for various classes of tenants and in its broad aspect this Schedule is perfectly reasonable, for it ensures that every tenant will have in his possession at least five standard acres of land. If the tenant is ordered to be evicted from his entire holding, an area of five standard acres would be allotted to him from the surplus land but if, on the other hand, the tenant is still to retain some land in his own right, then only such allocation from the surplus area will be made as will total his holding to five standard acres and, of course, if he already has five standard acres or more in his possession in spite of the eviction order, then the allocation to be

Ram Partap
v.
Financial Commissioner,
Punjab
and others

Dulat, J.

Ram Partap
v.
Financial Com-
missioner,
Punjab
and others

Dulaṭ, J.

made from the surplus area will be nil. This does not mean that he has not been accommodated as is required by section 9-A but that in view of his holding no further allocation from out of the surplus area is in his case necessary. It is, in the circumstances, wholly unnecessary to conclude that there is any conflict between section 10-A of the Punjab Security of Land Tenures Act and rule 18 of the rules and I am unable to accept Mr. Dhillon's contention.

As I have already mentioned, the view adopted by the Financial Commissioner in the present case is in accordance with the view of Mr. Grewal in *Gurmej Singh and another v. Manmohan Chander and another* (1) and I might mention that that decision was sought to be challenged in this Court through a writ petition but the Division Bench hearing it dismissed that writ petition *in limine* probably thinking that there was nothing wrong with the view of the learned Financial Commissioner, but apart from that it seems to me that the learned Financial Commissioner's view of the law is perfectly reasonable and needs no revision. I would, therefore, decline to interfere and dismiss the petition but considering the circumstances leave the parties to their own costs.

Bedi. J.

J. S. BEDI, J.—I agree.

B.R.T.