

REVISIONAL CIVIL

Before D. K. Mahajan and B. S. Dhillon, JJ.

JANGIR SINGH, ETC.,—Petitioners

versus

HARMEL SINGH,—Respondent

C.R. No. 949 of 1969

May 6, 1970

*Punjab Pre-emption Act (I of 1913)—Section 22(1)—Composite order demanding cash deposit and security—Whether can be passed—Section providing two alternatives—Court exercising discretion to enforce one alternative—Whether can permit the other alternative to be followed.*

Held, that under section 22(1) of the Punjab Pre-emption Act, 1913 the first alternative is that the Court can demand cash deposit not exceeding one-fifth of the probable value of the land or the property sought to be pre-empted. The second alternative is that the Court can demand security of a sum not exceeding the probable value of the property or land sought to be pre-empted. In other words security is not limited to the extent of one-fifth of the probable value of the land or property. It is, therefore, evident that there are two separate guidelines for the Court for enforcing the two separate alternatives. That being so it follows that one or the other alternative has to be resorted to and not both. Hence a composite order demanding cash deposit and security cannot be passed. Such an order suffers from the vice that it cannot be supported by any of the guidelines of section 22(1) of the Act.

Held, that if in the first instance an order under section 22(1) of the Act is passed on the basis of one alternative. It is open to the Court, on application of the party, to alter that order and permit the other alternative to be followed.

*Petition under section 115 of the Civil Procedure Code for revision of the order of the Court of Shri Dina Nath, Subordinate Judge, 1st Class, Muktsar, dated 30th August, 1969, deciding the issue against the defendants and holding that the pre-emptor has complied with the provisions of section 22 of the Pre-emption Act.*

K. L. SACHDEV, ADVOCATE, for the Petitioners.

BALBIR SINGH WASU AND AMAR SINGH SANDHU, ADVOCATES, for the Respondent.

## JUDGMENT

The Judgment of the Court was delivered by:—

D. K. MAHAJAN, J.—This petition for revision was admitted to a Division Bench because in *Dalip Singh and others v. Hardev Singh and others* (1), a doubt was cast on the decision in *Suraj Parkash and another v. Smt. Nina Rani Aggarwal and another* (2).

(2) Hazur Singh sold the land in dispute to Jangir Singh and others. This sale was pre-empted by Harmel Singh. He claimed possession by pre-emption on the ground that he was the son of the vendor. When the suit was registered the trial Court ordered the plaintiff to deposit one-fifth of the probable value of the land, namely, Rs. 1,352 on or before the 11th August, 1969. On the 24th of July, 1969, the plaintiff applied to the Court that he may be permitted to give security instead. The Court allowed the application and instead of passing an order as prayed, directed that a sum of Rs. 700 in cash be deposited and security to the extent of Rs. 6,060 be furnished. This order was passed on the 25th of July, 1969. It is this order which has been called in question in the present petition for revision.

(3) The contention of the learned counsel for the petitioner is that this order is illegal and without jurisdiction. The argument is that section 22(1) of the Punjab Pre-emption Act (hereinafter referred to as the Act) allows two alternatives. The Court can pass an order enforcing one or the other alternative. It cannot enforce both the alternatives either wholly or in parts. In other words, a composite order demanding cash deposit and security cannot be passed. On the other hand, the contention of the learned counsel for the respondent is that such an order is not an invalid order. His argument is that keeping in view the scheme of the provision and its object it is open to a Court to pass a composite order. It is the validity of these respective contentions which falls for determination.

(4) In *Suraj Parkash and another v. Smt. Nina Rani Aggarwal and another* (2) I held that a composite order can be passed. On a further consideration of the matter I am clearly of the view that I made a mistake in taking that view. It appears to me that the

(1) 1969 P.L.R. 61.

(2) 1967 P.L.R. 642.

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view taken by my Lord the Chief Justice in *Kaka Singh v. Dalip Singh* (3) that a composite order cannot be passed, is the correct view. It is not necessary for us to go into the further question, namely, if a composite order is passed and a part of it is not complied with, what is its effect? Suffice it to say that once a composite order is passed, if it is legal it has to be complied with and if it is not legal no question of its compliance can arise.

(5) I may now state the reasons that have prevailed with me in accepting the view of my Lord the Chief Justice in *Kaka Singh's case* (3) as correct. It is the language of section 22(1) which has led me to this conclusion. The first alternative is that the Court can demand cash deposit not exceeding one-fifth of the probable value of the land or the property sought to be pre-empted. The second alternative is that the Court can demand security of a sum not exceeding the probable value of the property or land sought to be pre-empted. In other words security is not limited to the extent of one-fifth of the probable value of the land or property as is the case when a cash deposit is demanded. It is, therefore, evident that there are two separate guidelines for the Court for enforcing the two separate alternatives. That being so, it follows that one or the other alternative has to be resorted to and not both. When a composite order, as in the present case, is passed it suffers from the vice that it cannot be supported by any of the guidelines of section 22(1). It is on the very wording of the statute that the interpretation placed on section 22(1) by my Lord the Chief Justice is the correct interpretation and my decision in *Suraj Parkash's case* (2) is not correct.

(6) The second contention of the learned counsel for the petitioner is that once the Court has exercised its discretion to enforce one or the other alternative it cannot, on the application of the pre-emptor, change its earlier order and permit that the other alternative may be followed. In support of this contention reliance is placed on *Bakhtawar Singh v. Yadvinder Singh* (4). It may be mentioned that the headnote in this case does not correctly depict the ratio of the decision. That case was decided on its own peculiar facts and on the ground that in view of persistent defaults, the proper course was not to allow the deposit to be made. In

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(3) 1967 P.L.R. 771.

(4) 1968 P.L.R. 1055.

that case, I simply noticed the contention of the learned counsel and did not pronounce upon its correctness. After noticing the contention I proceeded to decide the case on its own facts. The decisions to which I referred in that case do not deal with the question now to be settled. Therefore, the decision in *Bakhtawar Singh's case* (4) is no authority for the view which its headnote adumbrates. This aspect of the case is concluded by the Division Bench decision in *Dalip Singh's case* (1) wherein it has been held that if in the first instance an order has been passed on the basis of one alternative, it is open to the Court, on application of the party, to alter that order and permit the other alternative to be followed. In view of the decision in *Dalip Singh's case* (1), the second contention has no merit and must fail.

(7) The only question that remains to be settled is as to what order is to be passed in the present proceedings ? It is obvious that the order of the trial Court which is the subject matter of revision is without jurisdiction and has to be vacated. The only course open is to direct the trial Court to pass a proper order keeping in view the observations made above. As soon as the Court passes a proper order it will give time to the plaintiff to comply with it.

(8) For the reasons recorded above, this petition is allowed and the order of the trial Court is set aside. There will be no order as to costs. The parties are directed to appear in the trial Court on 25th of May, 1970.

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B. S. G.

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APPELLATE CIVIL

Before Mehar Singh, C.J. and B. R. Tuli, J.

LILA KRISHAN, ETC.—Appellants

versus

UNION OF INDIA, ETC.—Respondents

Letters Patent Appeal No. 278 of 1966

May 13, 1970

*Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 19(2)—Auction of evacuee property in possession of an unauthorised occupant—Title conferred on the auction-purchaser—Unauthorised occupant—Whether can be dispossessed by Rehabilitation authorities in order to deliver possession to the auction-purchaser.*