

dated August 31, 1965 issued by the Central Board of Direct Taxes which provides that where the required particulars have not been furnished by the assessee and no claim for depreciation has been made in the return, the Income Tax Officer should estimate the income without allowing depreciation allowance. Further, it was held that from the language of Sections 32(1) (ii) and 34(1) read with the Circular, it was clear that in case the assessee had not claimed depreciation, the Income Tax Officer could not give him depreciation allowance.

(4) The proposition of law that the assessee must furnish particulars for claiming depreciation allowance is also supported by *Pr. Al. M. Muthukaruppan Chettiar v. Commissioner of Income Tax, Madras* (2), and *Rao Bahadur S. Ramanatha Reddiar v. The Commissioner of Income Tax, Burma* (3).

(5) As mentioned earlier, depreciation allowance is, at any rate, a benefit available to the assessee to avail of, but if the assessee chooses not to claim it, it would be contrary to reason and law to hold that it must be forced upon him.

(6) In this view of the matter, both the questions posed are hereby answered in the affirmative in favour of the assessee and against revenue. This reference is disposed of accordingly. There will, however, be no order as to costs.

P.C.G.

Before : M. R. Agnihotri, J.

MOHINDER SINGH.—Petitioner.

versus

THE FINANCIAL COMMISSIONER (TAXATION) OF THE STATE OF PUNJAB, CHANDIGARH AND OTHERS,—Respondents.

Civil Writ Petition No. 1215 of 1983.

2nd June, 1989.

Punjab Security of Land Tenures Act, 1953—Ss. 9 & 9-A, Form K-1—Small land owner—Obtaining order of eviction against tenant—Tenant not taking possession of alternative land—Eviction of such tenant.

(2) (1939) (VII) I.T.R. 76.

(3) I.T. cases (vil. 3) 10.

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Held, that the tenant has been granted a limited protection by allowing him to retain possession of the land in dispute till some alternative land is allotted to him, does not confer upon him an indefeasible right to retain the land under his tenancy belonging to a small landowner till he actually gets possession of the alternative land allotted to him. It has been specifically stated in para 12 of the written statement filed by the Collector that alternative land had in fact been allotted out of the surplus land by the Collector,— *vide* his order dated 7th May, 1984 in village Khadoor Sahib, Tehsil Tarn Taran, where surplus land was available for allotment. If possession of the alternative land allotted to respondent No. 6 could not be taken by him and the allotment was later on cancelled, it was no fault of the petitioner. Respondent No. 6 can still apply for some other land to be allotted but the land in question under his tenancy belonging to the petitioner must be vacated by him.

(Para 7).

Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be graciously be pleased to:—

- (a) Issue a Writ of Mandamus or Certiorari or any other writ, direction or order for quashing the orders of the Respondents 1 to 5 which have been referred in the foregoing paras of the writ petition.
- (b) Issue a Writ of Mandamus, Certiorari or any other appropriate writ, order or direction to the respondents 1 to 5 directing them and declaring the act and all actions of respondents Nos. 1 to 5 as malafide, illegal and contrary to law, and A Direction to the respondents directing them to issue a warrant of possession in favour of the petitioner to take possession of the land in question to which the petitioner is entitled.
- (c) Allow the costs of the proceedings in favour of the petitioner.

Any other and such other relief as this Hon'ble Court deems fit and proper in the circumstances may be allowed in favour of the Petitioner.

CIVIL MISC. NO. 4687 of 1987.

Application U/s 151 C.P.C. praying that the rejoinder of the counter-affidavit/reply may kindly be placed on record with the case in the interest of justice, equity and fair play.

C. P. Saxena, Advocate, for the petitioner.

Gurbachan Singh, Advocate, for respondent No. 6.

S. P. Soni, Advocate, for A.G. (Pb).

JUDGMENT

M. R. Agnihotri, J.

(1) In this petition under Articles 226 and 227 of the Constitution, the short question involved is, as to whether a small landowner is entitled in law to get possession of his land back from the tenant under the Punjab Security of Land Tenures Act, 1953, or he is to be deprived of his land for all times to come because the tenant, instead of taking necessary steps to have the alternative land allotted from the Government, continues to retain the land in question by protracting the proceedings before the various Tribunals and the Courts.

(2) Petitioner Mohinder Singh owned 16 Kanals 8 Marlas of land (about 2 Standard Acres) situated in village Sheikh Chak, Tehsil Tarn Taran, District Amritsar. He entered into an agreement for the lease of the aforesaid land with Saudagar Singh, respondent No. 6, on 4th May, 1972. According to the terms of the agreement (Annexure P.1), which was in fact a *Pattanama* for one year only, land was taken on lease for the year *Sauni* 1972 to *Hari* 1973. After expiry of the lease period, the land in question was not vacated by respondent No. 6, but he got the lease extended for another two years. Even thereafter it was not vacated nor was any lease money paid to the landowner-petitioner. The petitioner had filed a number of suits for the recovery of the lease money which were decreed from time to time. Ultimately he invoked the provisions of Section 9(i) and (ii) of the Punjab Security of Land Tenures Act, 1953, and filed an application in Form K-I for ejection of the tenant (respondent No. 6) from the land in dispute. The application was allowed by the Assistant Collector 1st Grade, Tarn Taran, on 8th August, 1975, and ejection of the tenant was ordered with a direction, that the tenant should seek his remedy for getting the alternative land allotted to him for his resettlement on some surplus area under the Punjab Land Reforms Act, 1972. Against the aforesaid ejection order dated 8th August, 1975, the respondent filed an appeal before the Additional Deputy Commissioner, Amritsar, and the order of the learned Assistant Collector was reversed on 19th December, 1975. Aggrieved against the same, the petitioner filed an appeal before the Addl. Commissioner, Jullundur Division, Jullundur, which too was dismissed on 31st May, 1978. Even the revision petition before the learned Financial Commissioner, Taxation, Punjab, was dismissed on 11th February,

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1979,—*vide* order (Annexure P.8), but the learned Financial Commissioner, while disposing of the revision petition of Mohinder Singh petitioner, issued the following direction regarding the ejection of respondent Saudagar Singh :

“In order to avoid any hardship to Mohinder Singh, I further order that Saudagar Singh should be accommodated on some alternative land within two months.”

Despite this, the tenant, respondent No. 6, did not make any effort to have the alternative land allotted to him and continued to retain the land in question belonging to the petitioner without paying any rent. The efforts made by the petitioner from time to time did not bear any fruit and the application for restoration of his land by executing the order of the learned Financial Commissioner, Taxation, proved abortive for another two years. Ultimately, it was on 16th December, 1981, that warrant of possession of the land in dispute was issued in favour of the petitioner by the Assistant Collector 1st Grade, Tarn Taran, after the learned Assistant Collector came to the conclusion that the respondent had shown gross negligence in pursuing the case for alternative allotment and had never bothered to apply for the same. It was thereafter that the respondent-tenant paid the arrears of lease money to the petitioner thereby rendering his suit filed for recovery of the same as infructuous, which was accordingly withdrawn. Still when the petitioner found that physical possession of the land in dispute was not being delivered to him, he filed the present writ petition for the issuance of a writ of *mandamus* for delivering possession of the land in dispute to him.

(3) In the first instance, the writ petition was dismissed *in limine* by the Motion Bench on 7th March, 1983, but when the petitioner approached the Supreme Court in Civil Appeal No. 1082 of 1987, the Supreme Court passed the following order on 21st April, 1987 :—

“After hearing learned counsel for the parties, we do feel that the High Court should not have dismissed the writ petition *in limine* but should have called upon the State Government to file a return justifying the inaction for the last several years. We accordingly grant special leave, set aside the order passed by the High Court and

remit the writ petition for rehearing. The High Court shall dispose of the case as early as possible and in any event, not later than four months from today.

The appeal is disposed of accordingly with no order as to costs.

Sd/- A. P. Sen

Sd/- B. C. Ray

Judges.”

It was thereafter that the writ petition was admitted on 8th October, 1987.

(4) In reply to the writ petition, written statement has been filed by the Collector, Amritsar, on behalf of respondents Nos. 1 to 5, that is, the Financial Commissioner, Commissioner, Collector, etc., in which it has been pleaded that “warrant of possession in favour of the petitioner was issued on 17th December, 1981, by the Assistant Collector 1st Grade, Tarn Taran, and the same was executed to the extent of symbolic possession on 22nd December, 1981,—*vide* Rapat No. 124.” Thereafter, the respondent got operation of warrant of possession stayed on the same day from the Court of Collector, Amritsar and by his order dated 30th April, 1982, the Collector had remanded the case to the lower Court and the Assistant Collector 1st Grade, Tarn Taran, on 26th April, 1983, had directed that the application for grant of surplus area may be kept pending. It has further been stated that according to the first proviso to Section 9-A of the Punjab Security of Land Tenures Act, 1953, “if the tenant concerned is the tenant of a small landowner, he shall be allowed to retain possession of his tenancy to the extent of 5 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”. Thus, according to the Collector, “It was, therefore, necessary to accommodate respondent No. 6 on surplus land after ejection from the land in question.” Finally, it has been stated by the Collector that “respondent No. 6 has been allotted surplus land by the Collector,—*vide* his order dated 7th May, 1984, in village Khadoor Sahib, Tehsil Tarn Taran, where the land was available for allotment. However, the order of the Collector was challenged, which was set aside by the orders of the Commissioner, Jalandhar Division,—*vide* order dated 28th February, 1985.”

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(5) Respondent No. 6 has also filed his separate return reiterating the stand taken by the Collector as also pleading *inter alia* that the petition was a belated one, the orders of the authorities below were within jurisdiction and that even if the respondent had not applied for the allotment of the alternative land under the Punjab Utilisation of Surplus Area Scheme, 1973, or under the Punjab Security of Land Tenures Rules, 1956, no relief could be granted to the petitioner as: "no penalty is provided under any of the above two provisions for not making any such application".

(6) I have gone through the pleadings of the parties and have heard their learned counsel. In my considered opinion, the stand taken by the respondents, especially the tenant respondent No. 6, is wholly illegal, contrary to the very intention and provisions of the statute, besides being highly unfair to the petitioner, who is a small landowner owning only two Standard Acres of land. If the petitioner has not got his land back even inspite of his consistent efforts right from the lowest authority in the Revenue Administration upto the apex Court of the country, it is only due to the callous and non-cooperative attitude of the Revenue Authorities of the State. The mandate of the Legislature as expressed in Sections 9 and 9-A of the Punjab Security of Land Tenures Act, 1953, is clear that while introducing agrarian reforms in the country, rights of small landowners in the State have to be protected and the centuries old relationship of landlord and tenant, coupled with the right of the landlord to eject his tenant who is not paying the rent regularly, has to be recognised. That is why it has been provided that a tenant of a small landowner will be allowed to retain possession of the land of his tenancy only upto the time he is not allotted some alternative land, and not for all times to come. In the present case, the tenant-respondent No. 6, in the first instance, did not take any steps whatsoever for having an alternative land allotted and it has been found as a fact by the Revenue Authorities that he had been negligent in pursuing his case. Even the stand taken by him in his written statement proves the same thing as the plea taken is that since no penalty has been provided for not making an application under Rule 15 of the Punjab Security of Land Tenures Rules, 1956, as well as under the Punjab Utilisation of Surplus Area Scheme, 1973, no relief could be granted to the landlord. In this situation, the ejection of the tenant from the land in dispute, if it happens to be the land of the small landowner, can certainly be brought about, especially when the tenant had been a habitual defaulter in the payment

of rent. In the instant case, not less than half a dozen times the landlord had to file a suit for recovery of rent against respondent No. 6 and it was only after the filing of the suit that the tenant obliged the petitioner landlord by depositing the amount of rent, that too in the Court. Consequently, I have no hesitation in holding that the tenant respondent No. 6 is certainly liable to be evicted from the land in dispute, to the possession whereof the petitioner, who is a small landowner, has a right flowing from Sections 9 and 9-A of the Punjab Security of Land Tenures Act, 1953.

(7) The mere fact that the tenant has been granted a limited protection by allowing him to retain possession of the land in dispute till some alternative land is allotted to him, does not confer upon him an indefeasible right to retain the land under his tenancy belonging to a small landowner till he actually gets possession of the alternative land allotted to him. It has been specifically stated in para 12 of the written statement filed by the Collector that alternative land had in fact been allotted out of the surplus land by the Collector,—*vide* his order dated 7th May, 1984, in village Khadoor Sahib. Tehsil Tarn Taran, where surplus land was available for allotment. If possession of the alternative land allotted to respondent No. 6 could not be taken by him and the allotment was later on cancelled, it was no fault of the petitioner. Respondent No. 6 can still apply for some other land to be allotted but the land in question under his tenancy belonging to the petitioner must be vacated by him. This right of the landlord to have the tenant ejected for non-payment of rent has been upheld recently by the various Courts and the consensus is not to put any premium on the efforts of the tenants in retaining the land by not paying the rent regularly. No sympathy can be shown to such a tenant who has been compelling the landlord to approach the Courts time and again for recovery of the rent.

(8) Consequently, the writ petition is allowed and by issuing a writ of mandamus, respondent No. 5 is directed to execute the warrant of possession already issued in favour of the petitioner within a period of one month and to ensure that the vacant physical possession of the land in dispute is delivered by respondent No. 6 to the petitioner within the stipulated period. The petitioner shall also be entitled to the costs of this writ petition which are quantified at Rs. 1,000. C.M. No. 4687 of 1987 is also allowed.

P.C.G.