

The Indian Law Reports

CIVIL MISCELLANEOUS

Before R. S. Sarkaria, J.

NACHHITTAR SINGH,—*Petitioner*

versus

THE FINANCIAL COMMISSIONER, PLANNING, PUNJAB—*Respondent*

Civil Writ No. 2373 of 1966

September 27, 1967

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 43—Scope of—Surplus area allotted and possession delivered to allottees—Landowner forcibly dispossessing them—Application for eviction of landowner and restoration of possession to allottees—Whether maintainable—Power of Collector to evict trespassers—Extent of—Interpretation of Statutes—Language of statute susceptible of two interpretations—Which one to be accepted—Statute excluding jurisdiction of Civil Courts—How to be interpreted.

Held, that section 43 of the Pepsu Tenancy and Agricultural Lands Act, 1955 applies to two kinds of wrongful or unauthorised possessors of land namely, (a) who are in possession under a transfer which has been invalidated by this Act; and (b) who are *not entitled* to the use and occupation of the land *under the provisions of this Act*. Cases of transfers of surplus area or other land, the transfer of which is prohibited by section 31 and 32-FF, would fall under clause (a). The difficulty, however, arises with regard to the true scope and content of clause (b). Its language is unduly flexible. It is susceptible of two interpretations. In its widest sense, it can be stretched to cover the case of each and every trespasser-in-possession of agricultural land, because even a stranger who was never a landowner, tenant, or allottee of that land would also be "a person not entitled to its use and occupation under any provision of this Act". In its narrower sense, the operation of clause (b) would be confined to only a special category of wrongful or unauthorised possessors whose right or title to use and occupy the land has been made wrongful or unauthorised by anything contained in this Act. Clause (b) of section 43(1) applies to the case of a *person*, who, but for the provisions of this Act, would be entitled to the use and occupation of the land. The words 'not entitled' used in this clause include the cases of those persons who have been "disentitled" to the use and occupation of the

land under the provisions of this Act. The jurisdiction of the Collector to take action under section 43 will continue only so long as the implementation of the reform in respect of that land, embarked upon under the provisions of this Act or the Scheme framed thereunder is in the process of completion. That is to say, when everything which is required to be done by the Collector or any other authority or the tenant, allottee (settler) or landowner under this Act in respect of the land, has been done the Collector will become *functus officio*, and if after such full completion of the land reform any stranger or even a representative or an assignee of the former landowner or tenant forcibly and wrongfully dispossesses the allottee (settler), the Collector acting *suo motu* or on the application of the person thus dispossessed, is not competent to take action under section 43 of the Act.

Held, that when the language of a statute is susceptible of two constructions, the one which will advance and fit in with the scheme and purpose of the Act should be preferred.

Held, that the exclusion of the jurisdiction of Civil Courts to determine intricate questions of right and title to immovable property is not to be readily inferred. Every presumption should be made in favour of the jurisdiction of a Civil Court and all statutes excluding explicitly or by necessary implication the jurisdiction of the ordinary Civil Courts, have to be strictly construed.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ order or direction be issued quashing the orders Annexures A, B and D.

B. R. AGGARWAL, ADVOCATE, for the Petitioners.

G. R. MAJITHIA, for ADOVDATE-GENERAL (PUNJAB), for the Respondents.

ORDER

SARKARIA, J.—This is a writ petition under Article 226 of the Constitution for quashing orders, dated 19th November, 1965; 30th March; 1966; and 30th June; 1966; of the Collector, Agrarian Reforms, Barnala, the Commissioner, and the Financial Commissioner, respectively.

The circumstances giving rise to this petition are as follows:—

Under the Pepsu Tenancy and Agricultural Lands Act, 1955 (Pepsu Act No. XIII of 1955), (hereinafter referred to as 'the Act'),

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the land measuring 1.5 standard acres belonging to Jangir Singh, father of the petitioners, situated in the vicinity of village Handiaya, tehsil Barnala, was declared as 'surplus area' by the Collector, Sangrur, vide his order, dated 21st February, 1961, under the aforesaid Act and possession thereof was taken by the Collector under section 32-F of the Act on behalf of the State. The State allotted some of that land, which is now in dispute, to Bachhitar Singh, Respondent 4, and Kartar Singh; Respondent 5; under section 32-J of the Act, and possession of the land was delivered by the State to the aforesaid allottees on 17th May, 1963. The landowner, Jangir Singh, died on 20th March, 1965. Thereafter his sons, the present petitioners, forcibly dispossessed the allottees. The latter made an application to the Collector under section 43 of the Act for eviction of the petitioners and restoration of possession. The Collector allowed that application, ordered ejectment of the petitioners and restoration of possession to Respondent 4 and Respondent 5, and also imposed a penalty of Rs. 500 on the petitioners, with a direction that the amount, when realised, would be paid to the respondents. Mainly it is this order of the Collector which is being impugned. The orders of the Commissioner and the Financial Commissioner passed in appeal and revision had only affirmed this impugned order.

Shri B. R. Aggarwal, the learned counsel for the petitioners, contends that even if the facts, as stated above, are assumed to be correct, the Collector had no jurisdiction by virtue of section 43 of the Act to evict a trespasser and to restore possession to a person to whom land had been allotted under any provision of that Act. It is argued that as soon as the land was declared surplus, it vested, under the Act, in the State Government and all interest, rights and title of the landowner in it became extinct, and that if the former landowner forcibly re-enters into possession by dispossessing an allottee under section 32-J of the Act, his act is no better or no worse than that of any other trespasser. Mr. B. R. Aggarwal contends that all the proceedings which the various authorities were competent to take under the Act, had been completed in this case and nothing further remained to be done, viz., the land was declared surplus, it vested in the State which duly took possession of it and further allotted and delivered possession to the respondents. According to the counsel, thereafter under this Act, the authorities or the State had become *functus officio* and, if subsequently, the former landowner forcibly dispossesses the allottees, the remedy of the latter lies under the ordinary law of the land and not by means of petition

under section 43 of the Act. In short, it is maintained that the Collector has no power under section 43(1)(b) of the Act to eject a trespasser. In support of this contention, reference has been made to *Bur Singh and others vs. Commissioner of Patiala Division* (1) and *Nikka vs. Santokh Singh* (2).

On the other hand, Mr. Majithia, the learned counsel for Respondents 1 to 3, contends that the impugned order was one within the purview of section 43(1)(b) of the Act. He has laid stress on the fact that the land in dispute was allotted to the respondents under section 32-J of the Act and the Scheme framed thereunder with a right to purchase it in easy instalments. This is a case in which neither the former landowner has yet received any compensation for the surplus area nor the allottees have paid the full amount of the purchase price. The completion of this land reform under this Act has been frustrated by an act of petitioners who are representatives-in-interest of the former landowner. The Collector was fully competent, says Mr. Majithia, to prevent such frustration and to see to the effective completion and implementation of the reform by taking action under section 43 of the Act. Mr. Majithia also argues that the rulings cited by the counsel for the petitioners have no application to the facts of the present case.

Let me consider the contentions canvassed by the learned counsel on either side.

Section 43 of the Act reads as follows:—

“43. *Summary eviction and fine.*—(1) Any person who is in wrongful or unauthorised possession of any land—

(a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act; or

(b) to the use and occupation of which he is not entitled under the provisions of this Act;

may after summary enquiry, be ejected by the Collector, who may also impose on such person a penalty not exceeding five hundred rupees”

(1) I.L.R. (1961) 1 Punj. 546.

(2) 1959 L.L.T. 52.

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A plain reading of the above-quoted section would show that *prima facie* it applies to two kinds of wrongful or unauthorised possessors of land; namely (a) who are in possession under a transfer which has been *invalidated* by this Act; and (b) who are *not entitled* to the use and occupation of the land *under the provisions of this Act*. Cases of transfers of surplus area or other land the transfer of which is prohibited by sections 31 and 32-FF would fall under clause (a). The difficulty, however, arises with regard to the true scope and content of clause (b). Its language is unduly flexible. It is susceptible of two interpretations. In its widest sense, it can be stretched to cover the case of each and every trespasser-in-possession of agricultural land, because even a stranger who was never a land-owner, tenant, or allottee of that land would also be "a person not entitled to its use and occupation under any provision of this Act." In its narrower sense, the operation of clause (b) would be confined to only a special category of wrongful or unauthorised possessors whose right or title to use and occupy the land has been made wrongful or unauthorised by anything contained in this Act.

In order to determine the true scope and content of section 43(1) particularly its clause (b), of the Act, we have to keep in mind two well-settled principles of interpretation of statutes. The *first* is that where the language of a statute is susceptible of two constructions, the one which will advance and fit in with the scheme and purpose of the Act should be preferred. The second principle is that the exclusion of the jurisdiction of Civil Courts to determine intricate questions of right and title to immovable property is not to be readily inferred. Every presumption should be made in favour of the jurisdiction of a Civil Court and all statutes excluding explicitly or by necessary implication the jurisdiction of the ordinary Civil Courts, have to be strictly construed. Section 47 of this Act says that no Civil Court shall have jurisdiction to settle, decide or deal with any matter which is, under this Act, required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the prescribed authority. Its sub-section (2) further provides that no order of the Financial Commissioner, the Commissioner, the Collector or the prescribed authority made under or in pursuance of this Act shall be called in question in any Court. Reading section 43 and section 47 together, it is clear that the summary jurisdiction conferred on the Collector by section 43 is an exclusive jurisdiction.

Keeping the above twin principles in view, it is first necessary to refer to the Preamble and the Scheme of this Act. The Preamble

shows that this measure was enacted not only to amend and consolidate the existing law in the State relating to tenancy of agricultural land, but also to provide for certain measures of land reforms. Chapter I deals with preliminary matters. It includes definitions of the various terms. Section 3 in this Chapter defines "permissible limit" which for the purposes of this Act means 30 standard acres of land and where such 30 standard acres on being converted into ordinary acres exceed eighty acres such eighty acres. Section 4 emphasises that this Act shall over-ride other laws. Chapter II contains provisions with regard to reservation of land for personal cultivation. Chapter III makes provisions with regard to the general rights of tenancy. Chapter IV deals with the acquisition of proprietary rights by tenants. Section 23 in this Chapter provides for determination of compensation for acquisition of proprietary rights in accordance with the principles laid down in section 26. Sub-section (4) of section 23 lays down that on and from the date of the issue of a certificate under sub-section (3), the proprietary rights of the landowner in the land shall be deemed to have been extinguished and such proprietary rights shall vest in the applicant free from all encumbrances. The proviso to this sub-section makes it clear that the amount of compensation payable by the applicant shall be a first charge on such land. Section 27 lays down that compensation may be payable in instalments. Section 28 says how the compensation shall be paid to the landowner as soon as the amount of any instalment has been deposited by the tenant. Section 31 debars the former landowner from transferring ownership rights in any land in respect of which proprietary rights have been acquired under this chapter. Section 32 in that chapter makes it clear that no transfer of land after the commencement of the Act shall affect the right of any person to acquire proprietary rights in that chapter.

Chapter IV-A makes provisions with regard to ceiling on land, and acquisition and disposal of surplus area. Section 32-A lays down that no person shall be entitled to own or hold as landowner or tenant, land under his personal cultivation exceeding the permissible limit. Section 32-B and 32-BB require returns or declarations to be furnished by persons having land in excess of the ceiling or by certain landowners or tenants. Section 32-C provides with regard to the collection of information by the Collector through other agencies. Section 32-D says how that information collected by the Collector is to be prepared and submitted after including the

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advice of the Pepsu Land Commission, to be published and then submitted to the Government. Sub-section (6) says how the draft statement sent by the Collector shall be made final and published in the official Gazette. Thereafter, no person shall be entitled to question it in any Court or before any authority. Section 32-DD provides that future tenancies, judgments, etc., created or obtained after the commencement of the Act shall be ignored in determining the surplus area. Section 32-E provides that the surplus area determined under the foregoing provisions shall vest in the State Government after the date of publication of the final statement. Such area shall be deemed to have been acquired on the date on which possession thereof is taken by or on behalf of the State Government. Section 32-F gives the Collector power to take possession of the surplus area. Section 32-FF prohibits certain transfers which affect the sale of surplus area. Section 32-G lays down that where any land is acquired under section 32-E, there shall be paid compensation which shall be determined by the Collector or any other officer in the manner and in accordance with the principles laid down in the Act. Section 32-H provides that compensation payable by the State Government shall be given in cash or in bonds or partly in cash and partly in bonds. Section 32-J says that the surplus area acquired under section 32-E shall be at the disposal of the State Government. Its sub-section (2) enables the State Government to frame a Scheme for utilising the surplus area by allotment to certain tenants and to landless agricultural workers, etc. Under this section, the State Government has drawn up the Utilisation of Surplus Area Scheme, 1960. Paragraphs 7 and 8 of the Scheme prescribe the procedure for allotment of surplus area to tenants. Paragraph 9 provides for allotment of surplus area to workers and Biswedari ex-tenants. Paragraph 10 says that every settler shall be given a certificate in Form V describing clearly the land allotted to him. Paragraph 11 makes provision for delivery of possession to the allottee by the prescribed authority, which shall first obtain the order of the Collector under section 32-F. It is necessary for an allottee to take possession within one month of the issue of the certificate in his favour. The conditions of settlement are provided in paragraph 12. The settler (allottee) shall inter alia be liable to pay the prescribed amount of compensation in the manner laid down in paragraph 13. Clause (c) of paragraph 12(1) says, that the settler shall become full owner of the land when all payments due have been made. Clause (d) says that the settler shall not be competent to transfer his rights in the land till all the dues in respect of the land

are cleared. Sub-para (2) of paragraph 12 provides that in case the settler makes any default in the payment of whole of the amount of compensation or two successive instalments thereof, the allotment may be wholly or partly cancelled. Paragraph 13 prescribes the manner of payment of compensation.

Chapter IV-B deals with constitution of Land Commission and functions thereof. Chapter VI which is captioned 'Miscellaneous' contains among other provisions, section 43 which makes certain categories of persons in wrongful or unauthorised possession liable to summary eviction and fine by the Collector. The provision with regard to the bar of jurisdiction is also contained in this chapter.

From the Preamble and the Scheme and the various provisions of the Act, referred to above, it is quite clear to my mind that the present case falls fully within the purview of clause (b) of section 43(1) of the Act. The petitioners' father, Jangir Singh, was admittedly a big landowner and the area in dispute which once belonged to him, was declared 'suplus area' and vested in the State Government under the provisions of the Act. The Collector took possession of that area on behalf of the State. Thereafter, in accordance with the provisions of section 32-J and the Scheme framed thereunder, it was allotted by the State Government to Respondents 4 and 5. The necessary certificate under the Scheme was issued in favour of the allottees, who were to pay the compensation in the manner prescribed in paragraph 13 of the Scheme. It is not disputed that the allottees have not yet paid the whole of the amount of compensation due from them in respect of the land. Similarly, the former landowner has not yet received the compensation due to him. The rights of the allottees in the disputed land as well as that of the landowner are still subject to regulation by the Collector or the prescribed authority under the provision of this Act. To make it further clear, under clause (2) of paragraph 12 of the Scheme the State Government or the officer authorised in this behalf could cancel the allotment in favour of the respondents on account of their failure to pay up the entire amount of compensation, etc. In other words, the land in dispute was still liable to be dealt with by the various functionaries under this Act to implement and complete the reform initiated in respect thereof. I may reproduce here the following observations of Shri Ranbir Singh, Additional Financial Commissioner, made in *Shri Bal Krishan Khosla of Khatriwala vs. Ram Gopal* (Revenue Revision No. 232 of 1956-57),

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decided on 17th December, 1956, which correctly describe the object and scope of section 43:—

“The Pepsu Tenancy and Agricultural Lands Act has been enacted with a view to provide for certain measures of land reforms and for the security of the land tenures. Its enforcement has brought about radical progressive land reforms and presumably the legislature enacted section 43 to provide for effective and summary remedy for any unauthorised occupations after the promulgation of the Act. The purpose of inserting section 43 to the Act is, therefore, to provide for immediate implementation of the different sections of the Act whereby the holdings have to be regulated within the permissible limits or reservations of the land have to be made for personal cultivation or similar other changes provided for in the Act have to be brought about. Thus, this is a summary remedy for ensuring that the different provisions of the Act are being immediately complied with”

Thus construed in conformity with the Scheme and object of the Act, it is quite clear that section 43 empowers the Collector to evict in a summary way only in those cases where the legality of the petitioner's right to possession and the respondents' disability not to remain or continue in possession, are both the creature of the Act. The emphasis is on the words “under the provisions of this Act” occurring in both the clauses (a) and (b) of section 43(1), and not on the words “any person in wrongful or unauthorised possession of land”. The opening words ‘any person’ in this section are qualified by the crucial words “under the provisions of this Act.” In this connection, it is submitted, with respect, that the observations of Shri Jaidev Singh, Financial Commissioner, in *Fauja Singh vs. Surat Singh and others* (Revenue Revision 385 of 1955), decided on 15th October, 1955, to the effect, “that by using the words ‘any person’ in section 43 the legislature intended to take the scope of this section beyond the two classes of persons, namely, tenants or landlords,” are not correct. It could never be the intention of the Legislature that intricate questions of title or right to possession relating to agricultural land which has nothing to do with the provisions of the Act, should be decided by the Collector in a summary way and not by the ordinary Civil Courts in accordance with the general law of the land.

I have no doubt in my mind that clause (b) of section 43(1) applies to the case of a *person*, who, *but for the provisions of this Act*, would be entitled to the use and occupation of the land. The words 'not entitled' used in this clause obviously include the cases of those persons who have been "*dis-entitled*" to the use and occupation of the land under the provisions of this Act. In the present case, but for the steps taken under the provisions of this Act by the various functionaries, including the Collector and the State Government, the petitioners' use and occupation of the land would have been perfectly valid and legal. Similarly, but for the allotment made in favour of the Respondents 4 and 5 under the provisions of this Act and the Scheme framed thereunder, they would have no right to the possession and enjoyment of the land in dispute. However, the jurisdiction of the Collector to take action under section 43 will continue only so long as the implementation of the reform in respect of that land, embarked upon under the provisions of this Act or the Scheme framed thereunder is in the process of completion. That is to say, when everything, which was required to be done by the Collector or any other authority or the tenant, allottee (settler) or landowner under this Act in respect of the land, has been done, the Collector will become *functus officio*, and if after such full completion of the land reform any stranger or even a representative or an assignee of the former landowner or tenant forcibly and wrongfully dispossesses the allottee (settler), the Collector acting *suo-motu* or on the application of the person thus dispossessed, will not be competent to take action under section 43 of the Act.

In the instant case, however, as already observed, the allottees have not yet acquired full rights of ownership on payment of the whole of the amount of compensation, or everything which is supposed to be done by the Collector or the State, with regard to the payment of compensation, etc., to the landowner under the provisions of this Act, has been done. In short, the reform introduced under this Act in respect of the disputed land *still remains to be completed*. Hence, the jurisdiction of Collector to take action under section 43 of the Act has not exhausted.

Bur Singh's case (1), does not advance the case of the petitioners. The facts of that case were quite different. There, by mutual exchange, the petitioners held land in village Dulewal, while the respondents held land in village Dhilwan. The respondents, however, did not give possession of their land at village Dhilwan. The

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petitioners later on managed to take possession of those very lands which they claimed to have got in exchange. On a move by the respondents, the Collector dismissed the petition, holding that the case was outside the purview of section 43. On appeal by the respondents, the Commissioner, however, purporting to act under section 43 of the Act, ordered ejection. That decision was affirmed by the Financial Commissioner in revision. Upon these facts, Grover, J., held, "that section 43 of the Act cannot possibly apply to any alleged trespasser who came into occupation or possession of the land, which has nothing to do with the provisions of the Act." I am in respectful agreement with that view.

For all the reasons stated above, I have no hesitation in holding that the Collector was competent by virtue of section 43(1) of the Act to eject the petitioners in a summary way, and also to impose the penalty on them. The result is that the petition fails and is hereby dismissed. In the circumstances of the case, there will be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

NIRANJAN DASS SEHGAL,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 177 of 1967

September 27, 1967

Evidence Act (1 of 1872)—S. 123—Rule of privilege—Scope of—Records of State containing information regarding prosecution of Government servant for offences under Penal Code, institution of inquiries on several grave charges, defying the orders of the Government, committing of misconduct, etc. etc.—Whether privileged—Affidavit of the Officer concerned—What should contain—Privilege regarding documents relating to affairs of State—When can be claimed—Constitution of India (1950)—Art. 226 and 311—Disturbance of seniority—Show-cause