

Surjit Kaur alias  
Santo  
and anothers  
v.  
Jamail Singh  
and others

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Dua, J.

would be open to challenge in second appeal. Section 100, Civil Procedure Code, would accordingly not stand in the way of the appellants. The mere fact that Bikkar Singh has unilaterally associated with his brothers in joint cultivation does not seem in law by itself to confer on them the status of tenants of the landholders for the purpose of claiming a preferential right of purchase or a superior right of pre-emption. Tenancy seems to require bilateral agreement. No provision of law nor any precedent or principle has been brought to our notice in support of the view that mere unilateral association in cultivation of others by a tenant clothes those others with the status of tenants of the land-holder. Neither any contractual nor any legal basis for the alleged tenancy has been established on the record. The conclusion of the learned Senior Subordinate Judge on this point is thus clearly vitiated by an error of law. It would thus follow that in any event out of the vendees it was only Bikkar Singh, who was the tenant, and it was only the sale in his favour which could be held to be protected. But in view of our conclusion that this is not a fit case in which the executing Court's inherent power could legitimately be exercised, this appeal should prevail and allowing the same we set aside and reverse the orders of the Courts below and dismiss the respondents' application, dated 31st August, 1960. In the peculiar circumstances of the case the parties should bear their own costs throughout.

Capoor, J

S. B. CAPOOR, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

*Before Prem Chand Pandit, J.*

THE FOODGRAIN DEALERS' ASSOCIATION AND OTHERS,—  
*Petitioners*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

**Civil Writ No. 2429 of 1964:**

1965  
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April, 27th.

*Essential Commodities Act (X of 1955)—S. 3—Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964—Permit for purchase and movement of wheat issued in pursuance of which wheat purchased—State Government—Whether can acquire that wheat.*

*Held*, that there is no legal bar in the way of the Government to acquire the wheat in respect of which import permit has been

issued under the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964. The goods can be acquired even if the same are in transit or have actually reached their destination. The contravention of the provisions of Essential Commodities Act or the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964, or any other law is not a condition precedent for the acquisition of the goods under the Essential Commodities Act. Further, the Essential Commodities Act does not contemplate the issuing of any notice before taking action under the provisions of section 3(2)(f).

Petition under Articles 226/227 of the Constitution of India, *praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued quashing the order or action of the respondents by which they have frozen the stock of the purchased wheat in question, which the petitioners had purchased from Messrs. Dev Raj Madan Gopal, Commission Agents, Khanna Mandi, under the circumstances stated in the petition and with respect to which permit No. 340, dated 28th September, 1964 was issued in favour of the petitioners.*

H. L. SARIN AND MISS ASHA KOHLI, for the Petitioners.

M. R. SHARMA, ADVOCATE, FOR ADVOCATE-GENERAL, for the Respondents.

#### ORDER

PANDIT, J.—This petition under Articles 226 and 227 of the Constitution has been filed by the Food Grain Dealers' Association, Hassanpur, District Gurgaon, challenging the action of the Food and Supplies Department, Punjab Government, in freezing their stock of wheat, which was lying with Messrs. Dev Raj-Madan Gopal, Commission Agents, Khanna Mandi, District Ludhiana (hereinafter referred to as the Commission Agents), through whom they had purchased the same.

Pandit, J.

According to the allegations of the petitioners, they were all food grain dealers and had formed this Association. They were granted a food grains license in the name of the Association in July, 1964. On 14th, 16th, 17th and 18th September, 1964, they purchased 930 bags of wheat weighing about 882 quintals for Rs. 52,464.79 P. from the Commission Agents, out of which they paid a sum of Rs. 6,000 as advance and the balance had yet to be paid to them. On 18th September, 1964 they applied to the District Food and Supplies Officer, Gurgaon, respondent No. 3, for the grant of a permit under the provisions

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of the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964, for the import of the said purchased stock of wheat from Khanna Mandi to Hassanpur, for being sold to the ration-card holders of Hassanpur area. On 28th September, 1964, respondent No. 3 issued a permit allowing them to import 750 bags of wheat from Khanna Mandi to Hassanpur. This permit was valid up to 20th October, 1964. On 29th September, 1964, they went to the Commission Agents for taking delivery of the stock. On reaching there, they were informed that the entire stock lying with them, including the wheat purchased by the petitioners, had been frozen by the Government. It may be mentioned that on 23rd September, 1964, the Governor, in exercise of the powers conferred by clause (f) of sub-section (2) of section 3 of the Essential Commodities Act, 1955, read with the Government of India, Ministry of Food and Agriculture (Department of Food) Order No. 88, dated 28th June, 1961, directed the Commission Agents to sell to the District Food and Supplies Controller, Ludhiana, within a period of 30 days from the date of the service of that order, 1758 quintals of wheat and the price payable therefor would be regulated by section 3-A of the aforesaid Act. Thereupon, the petitioners on 30th September, 1964 approached the District Food and Supplies Officer, Ludhiana, respondent No. 5, for the grant of the necessary permission to remove their 750 bags for which they had got a permit, but with no result. On 1st October, 1964 they came to Chandigarh and met the Director, Food and Supplies, respondent No. 2, in this connection but nothing came out of their efforts. On 30th October, 1964 they received a telegram, dated 29th October, 1964 from the Commission Agents informing them that the Government had issued notice to them to weight the wheat, including the one purchased by the petitioners, and, therefore, they could send their representative to Khanna Mandi for that purpose, otherwise they would have to obey the orders of the Government. The petitioners were further advised that they could make a representation to the Government, if they so desired. On 2nd November, 1964 the petitioners again met respondent No. 2 and requested him to release the stock of wheat, which they had purchased. On that very day, they also approached the Chief Minister, Punjab, for the said purpose and made an application to him in this behalf. The same

was forwarded to respondent No. 2 for necessary action. On 4th November, 1964 they again made another application to respondent No. 2 in this connection and then personally met him on 6th November, 1964, but without any success. On 7th November, 1964 they again contacted the Commission Agents, who told them that their entire stock of wheat would be disposed of by the Food and Supplies Department within 2 or 3 days. That led to the filing of the present writ petition on 9th November, 1964.

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The only contention raised by the learned counsel for the petitioners is that after having issued the permit on 28th September, 1964, the respondents had no power or jurisdiction to freeze any portion of the stock of wheat, which they had purchased through the Commission Agents and forbid them from removing the same from Khanna Mandi to Hassanpur. The petitioners had not contravened any provisions either of the Essential Commodities Act, 1955, or the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964, or any other law. Moreover the petitioners were not given any notice by the respondents before this action was taken.

There is no merit in this contention. It has not been established on the record that the wheat, which the Commission Agents had been directed to sell to the District Food and Supplies Controller, Ludhiana, under their order dated 23rd September, 1964, belonged to the petitioners. The Commission Agents have not been made a party to this writ petition and they have not come forward to support this allegation of the petitioners. The petitioners cannot be held to be the owners of the wheat in question merely on the basis of a copy of the telegram, dated 29th October, 1964 alleged to have been sent by the Commission Agents to them. Even assuming for the sake of argument that the wheat in question lying with the Commission Agents belonged to the petitioners, the Government was well within its rights to acquire the same under section 3(2)(f) of the Essential Commodities Act. There was no legal bar in the way of the Government to acquire this wheat, notwithstanding the fact that the import permit had been issued in favour of the petitioners. The goods can be acquired even if the same were in transit or had actually

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reached their destination. The contravention of the provisions of the Essential Commodities Act or the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964, or any other law is not a condition precedent for the acquisition of the goods under the Essential Commodities Act. Further, the Essential Commodities Act does not contemplate the issuing of any notice before taking action under the provisions of section 3(2)(f). It has been clearly stated in the return filed by the respondents that the wheat in question was required in the public interest to meet the demand for seed, for consumption in the deficit States and also for making available wheat/wheat atta at reasonable rates to the consumers within the State. The only object behind the passing of the order acquiring the wheat in question was to assure the supply of wheat to the areas where it was imminently needed. It is further stated that the demand and the need of the people of the State was kept in view at the time of the seizure of these stocks.

In view of what I have said above, this petition fails and is dismissed, but with no order as to costs.

*B.R.T.*