

if a particular point of law has not been addressed and considered by this Court, it cannot bar a petitioner, who is not party to the proceeding to contend for such a position.

(6) The order of eviction made by the authorities under the Public Premises Act cannot be sustained and it is quashed. The petitioner shall be allowed to retain his possession provided he pays rent at the enhanced rates prescribed under the Rules and which the petitioner claims that he was always prepared to pay undertaken before this Court. All the arrears calculated at an enhanced amount of 10% over the existing lease as on 30.04.2005 and the further escalation reckoned for each year are paid within four weeks from today. If the petitioner commits default for the same, the order of eviction, which is already passed by the authorities shall stand restored and the respondents will be at liberty to enforce the order in the manner known to law.

(7) In C.W.P. No.2473 of 2010, both the counsel agree that the case addresses the very same legal submission contained in the above case. I am not, therefore, reproducing the reasoning and I would adopt what I have said in the other judgment to be applicable to this case as well.

(8) The writ petition in C.W.P. No.2473 of 2010 is allowed on the same terms.

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*P.S. Bajwa*

*Before K.Kannan, J.*

**BALDEV RAJ AND OTHERS,—Petitioners**

*versus*

**FINANCIAL COMMISSIONER, HARYANA AT CHANDIGRAH,  
AND OTHERS,—Respondents**

**Civil Writ Petition No.286 of 1986**

6th December, 2011

*Constitution of India, 1950 - Punjab Security of Land Tenures Act, 1953 - Ss.5-B, 10-A(b), 18, 18(4) - Dispute between transferee from land owner and tenant - Financial Commissioner vide order dated 26.6.1974 held that rights of a tenant under S.18 of the Punjab*

***Security of Land Tenures Act, 1953, could not be decided before landowner makes his reservation u/s 5-B of the Act - Two legal heirs died after that - Collector did not consider effect of inheritance and declared some land surplus - Order of the Collector affirmed - Writ Petition filed - Allowed - Held, matter remitted to Collector to first determine permissible area of landowners as per S.5-B of the Act.***

*Held*, There is a string of authorities to the effect that the Collector's determination of surplus shall be accompanied principally with the duty to allow for the permissible area on the landowner and to determine the permissible area of a tenant before a declaration is made. A statutory recognition to a tenant's right has its place, but it has to be subordinated to the landlord's right of reservation. Before the determination is done, if the landowner has died and the succession has taken place, then by the scheme of the Act, inevitably, there has to be a redetermination of the landlord's permissible area in the hands of the legal heirs. That determination shall precede the consideration of the tenant's right under Section 18.

(Para 6)

*Further held*, that in this case, the Collector has merely taken the inheritance as an incidental and a formal issue of recording their presence but in the manner of determination, he does not make reference to the entitlement of such legal heirs. On the other hand, he merely refers to the extent, which Hukam Singh and Aidal Singh were entitled to hold, not minding the fact that they had died at the time when he was passing the order.

(Para 7)

*Further held*, that all this is not to say that the tenant loses out everything. It would only mean that under the scheme of the Act, right under Section 18 for a tenant cannot be examined without first determining the landowners' reservation under Section 5-B. In this case, it is immaterial that the landlords themselves are not aggrieved and they are not before this Court. A transferee gets into the shoes of the transferors and he is entitled to protect his own rights to ensure that a reservation is so done that the property purchased by him falls within the reserved area. Such a determination again could not have been done without allowing the purchaser to participate

in the proceedings and allow for his objections to be stated before considering the right of the tenant. I will reject the plea that a purchaser endent elite cannot be heard at all. There has been sufficient case law that a transferee is entitled to be heard and it will be premature to even observe that the transferee is not likely to have any valid case to contend for.

(Para 8)

*Further held*, that the impugned orders are set aside and the matter is remitted to the Collector for first entering a determination of the permissible area for the landowners, who are the heirs of Hukam Singh and Aidal Singh and allow also an opportunity to the petitioner as a transferee from the sons of Hukam Singh and Aidal Singh to state his objections and prove the bonafides of his purchase. After such determination under Section 5-B, then the right of tenant could be considered. If there existed no surplus and the tenant cannot be protected to secure a benefit under Section 18 and if the landlords opt for action for ejection, the tenant could still stake a claim under the relevant rules in the capacity as ejected tenant. I have outlined the future course of action only because I am not still holding that the tenant should be left high and dry. They will get what the law accords to him.

(Para 9)

Arun Palli, Senior Advocate, with Mr. Sandeep Chabra, Mr. Jai Bhagwan, Mr. S.K. Garg, Mr. Tushar Sharma, Mr. Suvir, Mr. KVS Kang, Advocates, *for the petitioners*.

Anjum Ahmed, Additional Advocate General, Haryana, for respondents 1 to 3.

Surjit Singh, Senior Advocate, with Mr. Vikas Singh, Mr. Jagdev Singh and Ms. Shikha Sharma, Advocates, for respondent No.4.

**K. KANNAN, J. (ORAL)**

(1) The writ petition challenges the order passed by the authorities constituted under the Punjab Security of Land Tenures Act of 1953, who had rejected the plea of a transferee from the original landowners that the recognition of rights of a tenant under Section 18 could not have been done without allowing for a reservation of the landlord's permissible area, as required to be so under Section 5-B of the Act.

(2) The dispute is, therefore, between a transferee from the landowners and a tenant, who was staking a claim to the property to enlarge his right through purchase guaranteed under Section 18 of the Act. The property had originally belonged to one Darbari Singh and on his death, the property came to be inherited by two of his sons, namely, Hukam Singh and Aidal Singh. They had in turn gifted the properties in dispute in favour of their respective sons. When the descendants of Darbari Singh were agitating for their rights against the claim by a tenant under Section 18, the Financial Commissioner (Revenue) passed an order on 26.06.1974 that the rights of a tenant under Section 18 could not be decided before the landlord makes his reservation under Section 5-B of the Act. After the remand by the Financial Commissioner through his order dated 26.06.1974, it so happened that the landowners Hukam Singh and Aidal Singh died one after the other in 1975 and 1980 respectively. The contention by the petitioners was that in terms of Section 10-A (b), the effect of inheritance would be to save the property for the benefit of heirs and compel a determination of surplus in the hands of the heirs. The requirement of Section 5-B, as directed by the Financial Commissioner, would have to be considered with reference to the inheritance operating on the death of Hukam Singh and Aidal Singh. The Collector, however, rejected such a plea on the ground that the mandate of the Financial Commissioner was that the reservation of the landowners Hukam Singh and Aidal Singh alone were to be considered and it was not possible to go beyond the brief. After the remand, the Collector, therefore, held that Hukam Singh and Aidal Singh had each held an extent of about 35 standard acres and 3 ¼ units under self-cultivation and found 70 acres equivalent to 52 standard acres and 12 ½ units each in the hands of the tenants. According to Section 5-B, each of the landowners, namely, Hukam Singh and Aidal Singh, had to be allowed 30 standard acres in their permissible area and the balance of 5 standard acres and 3 ¼ units was to be declared as surplus and the right of tenant could be decided in terms of such a declaration. This reasoning as found from the order of the Collector was affirmed subsequently and the impugned orders reflect the same line of reasoning and it is challenged through this writ petition.

(3) It is contended by the learned senior counsel appearing on behalf of the petitioners that the direction of the Financial Commissioner could not have been considered without reference to the subsequent event of death

of the landowners and if through inheritance, the property had devolved on his heirs on the date of his determination, he was bound to take notice of such a subsequent event and allowed for the respective holding of the legal heirs as per their entitlement before allowing for consideration of tenant's plea for his permissible area. The learned senior counsel appearing on behalf of the private respondent, who is the tenant, would contend that the writ petition itself has been filed at the instance of a transferee only without making the transferors parties in the writ petition. The transferors had not themselves challenged the order and if they have not expressed any grievance for the same, *a fortiori*, the petitioners cannot also object to the same. It is the further contention that the direction of the Financial Commissioner could not have been breached by the Collector and more so, in a situation where the property did not belong to the estate of the respective deceased landlords, namely, Hukam Singh and Aidal Singh on their death to devolve by succession to his legal heirs. This contention was on the basis that the tenant has paid his installment at the time of the death and also subsequently parted with all the installments and in terms of Section 18(4) of the Act, the property was deemed to have vested in the tenant and did not survive to the landowners or the transferee. It is the further contention of the learned senior counsel for the tenant that the purchase by the petitioners itself was during the application filed by the tenant under Section 18 and, therefore, the principles of *lis pendens* shall apply to deny to the transferee a right to make claim in preference to a statutory right of the tenant under Section 18.

(4) The arguments relating to *inter se* rights of a transferee and the tenant must be examined only in the context of what right a transferee could claim could not be better than the landowners' right. It will be wrong to read into the principles of *lis pendens* that the transferee gets nothing. On the other hand, the transferee only takes the right of a transferor and cannot plead any right better than the transferor had. I will, therefore, first stave clear of the objection that a transferee cannot make any claim being affected by the principle of *lis pendens*.

(5) The point that would require a focus is whether the landowners could be said to have lost the right in favour of the tenant even before a reservation is made under Section 5-B. If the case was to be again considered only in the context of the effect of payment of first installment under Section

18(4), then there was perhaps not even a need by the Financial Commissioner to remit the matter for fresh consideration. The learned counsel relies upon two decision of the Hon'ble Supreme Court as pronouncing on the superior rights of a tenant and the effect of payment of installment under Section 18(4). **Rameshwar and others versus Jot Ram and another (1)** and **Kanaya Ram and others versus Rajinder Kumar and others (2)** hold the view that if there is a purchase application made by a tenant and he had also made the payment of installment, the subsequent death of a landowner cannot operate to defeat the tenant's right. In other words, the issue of inheritance in such a case is irrelevant and the tenant must secure what the statute protects under Section 18(4). This point is well taken only in so far as the issue of succession by itself will not take away the right of a tenant to assert what the statute provides under Section 18. It will be, however, too simplistic to assume that this will prevail over every other Section under the same Act. If the Financial Commissioner was remitting the matter to the Collector for consideration of the landowners' right of reservation under Section 5-B, it was not meant to be a mere formality. A tenant's right to obtain a compulsory purchase would be only in respect of properties which are available outside the permissible area of the landlord. The permissible area for a tenant can be determined only after the landlord exercises his right under Section 5-B of the Act. It has been held by a Division Bench of this Court in **Shanti Swaeupa versus State of Punjab (3)**, that reservation by a landowner is a sine qua non for the exercise of a tenant's right to purchase. When an application for purchase by a tenant is made, it could be considered only after the reservation has been made by the landlord. It shall be impermissible to consider a right for a tenant under Section 18 without determination of the landlord's permissible area.

(6) There is a string of authorities to the effect that the Collector's determination of surplus shall be accompanied principally with the duty to allow for the permissible area on the landowner and to determine the permissible area of a tenant before a declaration is made. A statutory recognition to a tenant's right has its place, but it has to be subordinated to the landlord's right of reservation. Before the determination is done, if the

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(1) 1975 PLJ 454

(2) 1985 PLJ 167

(3) ILR 1976 (1) P&H 304

landowner has died and the succession has taken place, then by the scheme of the Act, inevitably, there has to be a redetermination of the landlord's permissible area in the hands of the legal heirs. That determination shall precede the consideration of the tenant's right under Section 18.

(7) In this case, the Collector has merely taken the inheritance as an incidental and a formal issue of recording their presence but in the manner of determination, he does not make reference to the entitlement of such legal heirs. On the other hand, he merely refers to the extent, which Hukam Singh and Aidal Singh were entitled to hold, not minding the fact that they had died at the time when he was passing the order.

(8) All this is not to say that the tenant loses out everything. It would only mean that under the scheme of the Act, right under Section 18 for a tenant cannot be examined without first determining the landowners' reservation under Section 5-B. In this case, it is immaterial that the landlords themselves are not aggrieved and they are not before this Court. A transferee gets into the shoes of the transferors and he is entitled to protect his own rights to ensure that a reservation is so done that the property purchased by him falls within the reserved area. Such a determination again could not have been done without allowing the purchaser to participate in the proceedings and allow for his objections to be stated before considering the right of the tenant. I will reject the plea that a purchaser *pendente lite* cannot be heard at all. There has been sufficient case law that a transferee is entitled to be heard and it will be premature to even observe that the transferee is not likely to have any valid case to contend for. (please see: **Lal Singh and another versus State of Punjab and others (4)**; **Narinder Singh versus State of Haryana (5)**; & **The State of Haryana and others versus Hari Singh and others (6)**). A purchaser, who parts with consideration is still a person, who can agitate his rights and seek for determination of what his vendor is entitled to seek for. This is on an assumption that a transferee is a bona fide transferee, who has parted with consideration. That will be an issue which the authority will consider before admitting the tenant for his right of purchase.

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(4) 1972 PLJ 730

(5) 1978 PLJ 368

(6) 1973 PLJ 811

(9) The impugned orders are set aside and the matter is remitted to the Collector for first entering a determination of the permissible area for the landowners, who are the heirs of Hukam Singh and Aidal Singh and allow also an opportunity to the petitioner as a transferee from the sons of Hukam Singh and Aidal Singh to state his objections and prove the bonafides of his purchase. After such determination under Section 5-B, then the right of tenant could be considered. If there existed no surplus and the tenant cannot be protected to secure a benefit under Section 18 and if the landlords opt for action for ejection, the tenant could still stake a claim under the relevant rules in the capacity as ejected tenant. I have outlined the future course of action only because I am not still holding that the tenant should be left high and dry. They will get what the law accords to him.

(10) The writ petition is allowed, but with such rights and liabilities as mentioned above.

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*J.S. Mehndiratta*

*Before Permod Kohli, J.*

**MAJOR SINGH AND OTHERS,—Petitioners**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

**CWP No. 14394 of 2010**

11th May, 2011

*Constitution of Inda, 1950 -Art. 226 - Delay & Laches - Petitioners claiming benefit of revised pay scales from the date when similarly situated employees were entitled to revised pay scales on completion of five years in service - Petitioners contended that their case covered by judgment rendered in CWP # 2208/989: Lekh Raj Khara & Ors v/s State of Punjab & Ors. - Respondent State contended that Petitioners could not be granted relief as they had approached Court after a long delay - Petitioners right can not be defeated on account of delay and laches.*