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restrictions on the trial of police officers in the ordinary Courts of law for offences alleged to have been committed by them.

However, without adverting to and expressing any opinion as to the *vires* of such a provision in the Police Rules (a point on which we have not been addressed) even on the language of Rule 16.38, in my opinion, to accede to its construction, as suggested by the petitioner's learned counsel, virtually means re-writing the rule, which is not the function of this Court. This Court cannot make law, it can merely interpret or construe it, and not modify or amend it under the cloak or guise of interpretation; though in this process of construction it may give the law shape, but this is permissible only within the strict limits of discernible legislative scheme or intent.

For the foregoing reasons, this revision fails and is hereby dismissed.

B.R.T.

LETTERS PATENT APPEAL

Before S. S. Dulat and Harbans Singh, JJ.

HARTEJ BAHADUR SINGH,—*Appellant.*

versus

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

Letters Patent Appeal No. 384 of 1963.

1964

April, 23rd

Pepsu Tenancy and Agricultural Land Act (XIII of 1955)—S. 43—Consolidation Officer putting the landlord in possession of land—possession of the landlord—whether wrongful or unauthorised—Mistake committed by Consolidation authorities—whether can be corrected by the

collector after summary enquiry—S. 7—Tenant relinquishing tenancy and handling over possession to landlord—whether entitles landlord to retain possession of such land.

Held, under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, it is the duty of the Consolidation authorities to put the land-owners or tenants into possession. That is a jurisdiction vested in them. If they put any person into possession, he cannot be said to have been in wrongful or unauthorised possession of the land because it does not fall either under clause (a) or clause (b) of sub-section (1) of section 43 of the Pepsu Tenancy and Agricultural Lands Act as it is not effected by a transfer either by an act of parties or by operation of law, which is invalid under the provisions of the said Act and there is no question of the person being entitled to the use and occupation of the same under the provisions of the Act. Mistake, if any, committed by the Consolidation Officer can be got corrected by proceedings under the Consolidation Act, and the Collector cannot, under the provisions of section 43 of the Pepsu Tenancy and Agricultural Lands Act, seek to correct the mistakes of and undo the acts performed by the Consolidation authorities.

Held, that section 7 of the Pepsu Tenancy and Agricultural Lands Act, related to the circumstances in which a tenancy can be terminated but that does not imply that if a tenant, of his own accord, relinquishes the tenancy and goes away handling over the possession to the landlord saying that he is no longer interested in the land, the possession of the landlord will become unauthorised or illegal.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice A. N. Grover, dated 11th November, 1963, passed in Civil Writ No. 1910 of 1963.

B. J. DHILLON, M. R. AGNIHOTRI, ADVOCATES, for the Appellant.

S. P. GOYAL, ADVOCATE, for the Respondent.

JUDGMENT

Harbans Singh, J.

HARBANS SINGH, J.—This is an appeal under clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court dismissing the writ petition (No. 1910 of 1963) filed by Hartej Bahadur Singh.

Brief facts giving rise to this appeal are as follows : Hartej Bahadur Singh appellant owned a considerable area of agricultural land in village Kahngarh, District Sangrur in the erstwhile Pepsu territory. Consolidation proceedings were taken in hand in the village in 1954 and repartition finally effected in 1958. Sucha Singh respondent, who apparently claimed to be a tenant in possession of a portion of the land belonging to the appellant, on 13th of October, 1958, filed an application under section 43 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Tenancy Act), stating that he had been in possession of the land as a tenant till *rabi* 1958, and thereafter "the consolidation authorities carved out a new *tak* and gave it to respondent (Hartej Bahadur Singh) and that the petitioner (Sucha Singh) had not been given possession over any area of land". He further went on to state that during *kharif* 1958, Hartej Bahadur Singh had taken forcible possession of the land which was with him. He, consequently, asked for restoration of the possession of the land of which he was the tenant. The Collector, after Hartej Bahadur Singh had been made a party to the proceedings before him, by his order, dated 17th of December, 1962, dismissed the application saying that Sucha Singh had miserably failed to prove that he had been wrongfully dispossessed by Hartej Bahadur Singh. The position taken by the appellant before the learned Collector was that the consolidation

authorities had correctly delivered the possession of the land in dispute to the appellant and that Sucha Singh had, by a mutual compromise, surrendered possession of the land in dispute prior to 1954. After giving the facts and the contentions raised by the parties, the learned Collector observed as follows:—

> "A perusal of the application made by the applicant reveals that in para No. 2 the applicant has admitted that the possession of the land in dispute was delivered by the consolidation authorities to the respondent (Hartej Bahadur Singh) and not to the applicant. From this very admission in the application, the applicant's case of forcible dispossession is shattered."

Referring to the witnesses produced by the applicant, who belonged to a different village and on whom the Collector was not inclined to place much reliance, he further stated that these witnesses had also mentioned that Hartej Bahadur Singh started cultivating the land after the consolidation proceedings. He, therefore, came to the conclusion that this evidence taken with the avertents made in para No. 2 of the application, showed that "Hartej Bahadur Singh was put in possession by the consolidation authorities". Sucha Singh went up in appeal to the Commissioner, who accepted the appeal and directed that the Collector should go into the question as to what *khasra* numbers Sucha Singh was in possession before consolidation and put him in possession of the land which had been given in lieu of the same. In coming to this decision, the learned Commissioner did not set aside the findings of the learned Collector that Hartej Bahadur Singh was, in fact,

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given possession of the land in dispute by the consolidation authorities or that Sucha Singh had not been forcibly dispossessed by Hartej Bahadur Singh. All that he found was that from the revenue records it appeared that Sucha Singh had been in cultivating possession of the *khasra* numbers in dispute prior to 1958 and that he had not been ejected out of this holding through any process of law. While dealing with the plea of the landlord that there had been a compromise before the Panchayat, whereby Sucha Singh gave up his tenancy of his own accord, he felt that this would not help the landlord because it had not been proved whether the compromise related to this parcel of the land which is now in dispute and that "even if this compromise be admitted, it is not in accordance with the law and unless the transfer is in accordance with the law, it is invalid. Such a compromise, therefore, cannot be relied upon in these proceedings". The landlord went up in revision to the Financial Commissioner who rejected it saying that, according to the landlord, Sucha Singh was not in possession of the land before 1958, while this statement was refuted by Sucha Singh. He then went on to say that ignoring the stray entries, the Collector should carefully find out which of the *khasra* numbers were cultivated by Sucha Singh before consolidation and possession should be restored to him of only such land as had been substituted for those *khasra* numbers. It was against these orders of the Commissioner and the Financial Commissioner that the writ was filed by the landlord.

The learned Single Judge very rightly held that even if the consolidation authorities decided the dispute with regard to the right-holder being a tenant or not, the conclusion so arrived at cannot be a final adjudication on the question of the

relationship between the parties. He then discussed the provisions of the Tenancy Act above referred to, and holding that under sections 7 and 7-A, the tenancy can be terminated on the grounds mentioned therein and that section 43 gives overall power to the Collector to evict a person who is in wrongful or unauthorised possession and put the tenant into possession if he is so entitled, dismissed the writ application. The landlord has come up in appeal.

Section 43 of the Tenancy Act is in the following words:—

> "43 (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.
>
> * * * *."

So far as a tenant is concerned, section 7 of the Tenancy Act provides that the tenancy cannot be terminated except for the reasons given therein. The question for determination, however, in the present case is : In what circumstances is the Collector invested with the jurisdiction given by

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section 43 to evict a person and put some other person in possession after summary enquiry?

The facts alleged and proved in the present case have first to be taken into account. The consolidation authorities, after consolidation proceedings, have to repartition the land and allot certain areas to each of the land owner in lieu of the land which he owned before the consolidation and which had been put in the hotchpotch. Out of the total land put into the hotchpotch by all the land-owners, certain areas have to be set apart for common purposes; etc., and the remaining area has to be ratebly distributed amongst the land-owners. The right to possession of the new holdings so carved out is dealt with in sub-section (1) of section 23 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, according to which if the owners and tenants affected by repartition agree to enter into possession of the holdings allotted to them, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him. Under sub-section (2), the Consolidation Officer shall, if necessary, put them in physical possession of the holdings to which they are so entitled. Section 25 provides that a land-owner or a tenant shall have the same right in the land allotted to him in pursuance of the scheme of consolidation as he had in his original holding or tenancy, as the case may be. Section 26 preserves the encumbrances and provides as follows:—

> "If the holding of a land-owner or the tenancy of a tenant brought under the scheme of consolidation is burdened with any lease, mortgage or other encumbrance shall be transferred and

attached to the holding or tenancy allotted under the scheme or to such part of it as the Consolidation Officer * * * *may have determined in preparing the scheme; * * * *."

Rules made under the Consolidation Act, *inter alia*, provide for the determination of the encumbrances during the consolidation proceedings.

From the above it is clear that if a person is a tenant under a landlord of a particular area of land, then the landlord will be allotted some other land in lieu of that but the possession shall have to be given to the tenant of the area corresponding to the area of which he was a tenant. The consolidation proceedings in no way affect the rights of the parties and in no way change their rights *inter se*. In the present case, if the facts alleged and proved were that after the consolidation proceedings, possession was, in fact, delivered to Sucha Singh as a tenant over the new land which had been allotted on repartition to Hartej Bahadur Singh in lieu of the land which was with this tenant and that subsequently the tenant was dispossessed, the provisions of section 43 of the Tenancy Act would be directly applicable and this was not disputed. Here, however, that is not the case. In the application filed by the tenant, as already given, the main allegation was that the consolidation authorities had given a new *tak* to the landlord and that the tenant had not been given possession over any part of the land. As stated above, the Collector also came to the same conclusion after taking into consideration this allegation in the application and the evidence on the record. These findings have not been specifically reversed by the higher authorities.

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The learned counsel for the respondent-tenant, however, urged that the *jamabandi* of the year 1954-55 showed that he was a tenant under the landlord of the area claimed by him and that he continued to be in possession and was dispossessed by the landlord. We adjourned the case in order to find out whether in the records of the consolidation authorities, Sucha Singh was actually mentioned as a tenant. In the *jamabandi* prepared after the repartition, Sucha Singh is not mentioned as a tenant in any portion of the land allotted to Hartej Bahadur Singh. This was not disputed. At best, it may mean that the consolidation authorities through some mistake or otherwise failed to treat Sucha Singh as a tenant and, consequently, refused to recognise him as such and give him possession over any portion of the new *tak* given to Hartej Bahadur Singh. The question is whether this mistake, even if committed by the consolidation authorities, can be set right by the Collector after summary enquiry under section 43 of the Tenancy Act. It was not disputed that if consolidation authorities make any mistake in the exercise of the jurisdiction vested in them, there is a provision for filing objections to the Consolidation Officer and for filing appeals from that order, to the Settlement Officer and then to the Assistant Director and ultimately a revision is provided to the State Government under section 42 of the Consolidation Act. The argument of the learned counsel for the respondent-tenant, however, was that it is optional for the tenant either to pursue his remedy under the Consolidation Act to get redress or to approach the Collector and ask him to summarily put him into possession. Under the Consolidation Act it is duty of the consolidation authorities to put the land owners or tenants into possession. That is a jurisdiction vested in them. If they put any person into possession, he cannot

be said to have been in wrongful or unauthorised possession of the land because it does not fall either under clause (a) or clause (b) of sub-section (1) of section 43 of the Tenancy Act because it is not effected by a transfer either by an act of parties or by operation of law, which is invalid under the provisions of the Tenancy Act and there is no question of the person not being entitled to the use and occupation of the same under the provisions of the Act. Mistake, if any, committed by the Consolidation Officer can be got corrected by proceedings under the Consolidation Act, and the Collector cannot, under the provisions of section 43 of the Tenancy Act seek to correct the mistake of, and undo the acts performed by the consolidation authorities.

It is necessary to refer to another matter dealt with by the learned Commissioner. According to him, even if a tenant has, by a compromise before the Panchayat; relinquished the possession in favour of the landlord, the same would be inoperative and against the provisions of the law. Section 7 of the Tenancy Act relates to the circumstances in which a tenancy can be terminated but that does not imply that if a tenant, of his own accord, relinquishes the tenancy and goes away handing over the possession to the landlord saying that he is no longer interested in the land, the possession of the landlord will become unauthorised or illegal. The learned counsel for the respondent conceded that this view of the learned Commissioner cannot be sustained.

From the evidence on the record it appears, therefore, that the possession was delivered to the landlord by the consolidation authorities and that being the case, he cannot be said to be in unauthorised possession. His possession is in accordance

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with the consolidation proceedings and the records prepared as a result thereof. The Collector under section 43 of the Tenancy Act, has no jurisdiction to interfere in anything done under the Consolidation Act even if some mistake has been made by the authorities during consolidation proceedings. The appeal, therefore, must be accepted, the order of the learned Single Judge set aside, the rule made absolute and the impugned orders quashed. The order of the Collector will stand. This will not, however, in any way prevent the tenant from pursuing any remedy that may be open to him. There will be no order as to costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

KAVITA,—*Petitioner.*

versus

THE PUNJAB UNIVERSITY,—*Respondent.*

Civil Writ No. 2378 of 1963.

1964

April, 27th

Punjab University Calendar 1962, Vol. I at page 97—Regulation 1 under the head 'Rectification of results'—Candidate—Meaning of—Person declared to have passed Matriculation Examination and granted certificate—Whether still continues to be a candidate—Result of such person—Whether can be quashed.

Held, that according to Regulation 1 under the Head 'Rectification of results' on page 97 of the Punjab University Calendar, 1962, Volume I, the result of a candidate can be quashed, even after it had been declared. With the declaration of the result, a candidate is entitled to a certificate, which bears the same date, on which the result is announced. If, the result is quashed, the certificate automatically falls and is of no use. A 'candidate' remains a 'candidate'