

was envisaged by the framers of the Act, and that is why a provision like the one contained in section 24 of the Act, was incorporated in the Act, because a wife who is dependent for her maintenance on her husband more than often has no means of her own for her maintenance and it must have been considered necessary that if Court has to have full information to help it decide the dispute, before it, justly and effectively then the spouse which has no means of her own should be enabled to effectively defend her case by asking the other spouse to pay for the litigation expenses as also to pay for her maintenance. Therefore, I am clearly of the opinion that the expression "proceedings under this Act" shall cover the execution proceedings as well; recourse to which was made necessary by Shri Durga Dass by not complying with the order of maintenance passed under section 25 of the Act. Therefore, I order Shri Durga Dass to pay Rs. 200 to the applicant and Rs. 50 per month to her towards maintenance with effect from the date of the application. The arrears of the maintenance amount as also the litigation expenses must be paid within one month from today and the amount of maintenance be paid to her by the 5th of every month by money order. The amount of maintenance so paid by Shri Durga Dass shall be accounted for in the amount of alimony that he has already been required to pay under section 25 of the Act. There is no order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before D. K. Mahajan and Bal Raj Tuli, JJ.

GRAM PANCHAYAT AND OTHERS,—Appellants

versus

HAR LAL AND OTHERS,—Respondents.

Letters Patent Appeal No. 556 of 1968.

November 19, 1970.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42, proviso—Expression "parties interested" mentioned in the proviso—Meaning of—Expression—Whether includes tenants on the land.

Gram Panchayat, etc. v. Har Lal, etc. (Tuli, J.)

Held, that the words "parties interested" in the proviso to section 42 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, mean persons whose rights of ownership or possession or any other rights in the land will be affected by the adjudication under section 42 of the Act. The reason is that no order adverse to the interest of any person whatever can be made without issuing notice to him and affording him an opportunity of being heard and that is the purpose and the intention of the proviso. It cannot be confined only to the rightholders. The tenants have also a right to be heard in order to safeguard their tenancy rights and to secure that, in case of any other land being allotted to the landowner under whom they are tenants, their rights in that land are protected and that the land allotted in lieu of the land going to be taken away from them is such a land which is cultivable and their interest as tenants will not in any way suffer.

(Para 3)

Letters Patent Appeal under Clause X of the Letters Patent of the Punjab and Haryana High Court against the Judgment, dated 25th September, 1968, passed by Hon'ble Mr. Justice Prem Chand Jain in Civil Writ No. 1067 of 1967.

G. C. MITTAL AND P. C. JAIN, ADVOCATES, for the appellants.

K. R. MAHAJAN, ADVOCATE, for the respondents.

JUDGMENT.

The judgment of this Court was delivered by :—

TULI, J.—This appeal under clause 10 of the Letters Patent is directed against the judgment of a learned Single Judge of this Court passed on September 25, 1968, in C.W. 1067 of 1967. The writ-petitioners had prayed for the quashing of the order of the Additional Director, Consolidation of Holdings, Haryana, at Gurgaon, dated December 30, 1966, on the ground that it had been passed without issuing any notice to them or affording them an opportunity of hearing although it affected their rights in the land and thus, the proviso to section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act), was violated. The learned Single Judge found force in this submission and quashed the impugned order. He further remanded the case to the Additional Director for rededcision on merits.

(2) The admitting note of the Bench admitting the Letters Patent appeal shows that it was stated by the appellants that the

respondents, that is, the writ-petitioners, got into possession of the land after the impugned order of the Additional Director under section 42 and there was no occasion to give them notice of the application. At the hearing of the appeal before us, it has been admitted that the respondent-writ petitioners were in possession of the land when the order was made by the Additional Director under section 42 of the Act. The plea that has been put forward is that the land had not been allotted to them and they had taken forcible possession of the land. In the return filed by the State it was stated that they had got into the possession as tenants-at-will under the Gram Panchayat. In view of these facts, we are of the opinion that the said respondents were parties interested in the decision of **the application under section 42 of the Act**, and a notice had to be given to them to **appear and show cause** against the granting of the application.

(3) The learned counsel for the appellants has, however, submitted that the words "parties interested" in the proviso to section 42 of the Act, only relate to the rightholders and not the tenants or other persons in possession of the land otherwise than as rightholders. We regret our inability to agree to that submission. The words "parties interested" in the proviso mean persons whose rights of ownership or possession or any other rights in the land will be effected by the adjudication under section 42 of the Act. The reason is that no order adverse to the interest of any person whatever can be made without issuing notice to him and affording him an opportunity of being heard and that is the purpose and the intention of the proviso. It cannot be confined only to the rightholders. The tenants have also a right to be heard in order to safeguard their tenancy rights and to secure that, in case of any other land being allotted to the landowner under whom they are tenants, their rights in that land are protected and that the land allotted in lieu of the land going to be taken away from them is such a land which is cultivable and their interest as tenants will not in any way suffer. The learned Judge has not decided the merits of the case which he has left to the Additional Director to decide afresh in the presence of the writ-petitioners. No fault can, therefore, be found with that order. We accordingly find no merit in this appeal and dismiss the same with costs. Counsel's fee Rs. 100.00.

K.S. K.