LETTER PATENT APPEAL

Before Mehar Singh, C.J. and R. S. Narula, J.

RAJ KANTA—*Appellant*

versus

THE FINANCIAL COMMISSIONER, PUNJAB AND ANOTHER,—*Respondents.*

Letter Patent Appeal No. 96 of 1966

February 5, 1970.

Punjab Security of Land Tenures Act (X of 1953)—Section 9(1) (ii)—Tenant committing default in payment of rent for one crop—Such default—Whether entitles the landlord to eject the tenant.

Held, that a landlord is not entitled to eject his tenant under section 9 (1) (ii) of the Punjab Security of Land Tenures Act, 1953, merely because the tenant has committed default in payment of rent for one crop, even if there be no sufficient cause for such non-payment. A single default in payment of rent would not amount to a failure on the part of the tenant to pay rent regularly. If it was intended to entitle a landlord to claim ejectment on a single default being committed by the tenant, the use of the word "regularly" would become a mere surplusage in the section.

(Para 17)

Letters Patent Appeal under Clause X of the Letters Patent of the Punjab High Court against the judgment of Hon'ble Mr. Justice Shamsher Bahadur, dated 10th March, 1966 given in Civil Writ No. 2767 of 1964.

H. L. SIBAL, SENIOR ADVOCATE, WITH S. C. SIBAL, R. C. SETIA, N. S. BHATIA AND H. S. GUJRAL, ADVOCATES, for the Appellant.

MR. H. L. SARIN, SENIOR ADVOCATE WITH H. S. AWASTHI AND A. L. BAHL, ADVOCATES, for the Respondents.

JUDGMENT

NARULA, J.—The circumstances in which these four appeals under clause 10 of the Letters Patent have arisen out of the common judgment of a learned Single Judge of this Court allowing three writ petitions (Civil Writs 18, 19 and 53 of 1963) filed by the tenants-respondents and dismissing one writ petition (Civil Writ 2767 of 1964) which had been filed by the landowner appellant may first be surveyed briefly.

(2) Pera Ram, Ganga Ram, Bhago and Kalu Ram were tenants of Mrs. Raj Kanta appellant on different portions of her agricultural land. In order to decide all these four appeals which raise a common question of law, relating to the interpretation of clause (ii) of sub-section (1) of section 9 of the Punjab Security of Land Tenures Act (10 of 1953) as subsequently amended (hereinafter called the Act), it would be enough to give the sequence of events relating to the cases of Pera Ram, Ganga Ram and Bhago (hereinafter collectively referred to as the tenants), since the chronology of events in the cases of all these three tenants is exactly the same. Though the dates in respect of the case of Kalu Ram are not the same, the difference therein is not material for purposes of resolving the controversy involved in the appeal against him.

(3) The tenants made separate applications under section 18 of the Act on September 4, 1961, for purchasing from Mst. Raj Kanta (hereinafter called the landowner) the land held by them in their respective tenancies. These applications were allowed by the Assistant Collector on October 31, 1961. The tenants made deposit of the first instalment of the amount fixed by the Assistant Collector in November, 1961. The appeal of the landowner preferred by her against the order of the Assistant Collector was allowed by the order of the Collector, dated January 10, 1962, and the applications of the tenants under section 18 of the Act were dismissed. In the meantime the tenants had not paid the rent of their respective holdings for Kharif 1961. It is the common case of both sides that the last date by which the rent for Kharif 1961 was payable by the tenants to the landowner was January 15, 1962. The payment not having been made within time and payment having in fact been refused by the tenants, the landowner filed separate applications against each of the tenants for their ejectment on March 6/7, 1962, on the ground that the tenants had failed to pay rent regularly without sufficient cause, a ground covered by section 9(1)(ii). The second appeals filed by the tenants against the appellate order of the Collector dismissing their applications under section 18 of the Act were also dismissed on May 31, 1962. The applications of the landowner for the ejectment of the tenants did not meet any better fate at the trial stage, and those were dismissed by the order of the Assistant Collector on April 2, 1962. The appeals preferred by the landowner against the dismissal of her applications for ejectment were, however, allowed by the order of the Collector, dated May 31, 1962. The second appeals preferred by the tenants in the ejectment proceedings were

dismissed by the order of the Commissioner, dated November 5, 1962. Shri R. S. Randhawa, the Financial Commissioner, also dismissed the tenants' petitions for revision on December 21, 1962, and upheld the orders of the Collector and the Commissioner directing the ejectment of the tenants. This order of the Financial Commissioner, dated December 21, 1962, and the orders of the Commissioner and the Collector, were impugned in Civil writ petitions Nos. 18, 19 and 53 of 1963, by the tenants.

(4) The orders in Kalu Ram's case followed the same pattern up to the stage of the decision by the Commissioner. His petition for revision was, however, decided by Shri Sarup Krishan, Financial Commissioner, and the same was allowed giving rise to the filing of Civil Writ 2767 of 1964, by the landowner.

(5) The learned Single Judge who heard all these petitions together, allowed the three writ petitions of the tenants (Civil Writs 18, 19 and 53 of 1963), but dismissed Civil Writ 2767 of 1964, which had been filed by the landowner against the order in favour of Kalu Ram. The ground urged on behalf of the tenants before the learned Single Judge which succeeded was that non-payment of rent due for one single crop could not be allowed to fall within the mischief of section 9(1)(ii) of the Act. It is the correctness of the decision of the learned Single Judge on this point which has been questioned in these appeals on behalf of the landowner.

(6) Clauses (ii), (iii) and (iv), and the explanation relating to clause (iii) of sub-section (1) of section 9 of the Act may be quoted at this stage:—

"Notwithstanding anything contained in any other law for the time being in force, no landowner shall be competent to eject a tenant except when such tenant—

(i) * * * * * *

(ii) fails to pay rent regularly without sufficient cause; or

(iii) is in arrears of rent at the commencement of this Act; or

(iv) has failed, or fails, without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to

the extent customary in the locality in which the land is situate ; or

(v) * * * * * *

(vi) * * * * * *

(vii) * * * * * *

Explanation.—For the purposes of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent."

(7) In order to bring a case within section 9(1)(ii), two positive things and one negative aspect must be established, viz:—

(i) that the tenant has committed default in payment of rent ;

(ii) that the default is in maintaining regularity in payment of rent; and

(iii) that if (i) and (ii) are established, there is no sufficient cause for the tenant's default.

The sufficiency or insufficiency of the cause for non-payment is an entirely separate matter and no plea was raised before us on behalf of the tenants that the failure to pay the rent for the crop of Kharif, 1961, was for "sufficient cause." Though it had been pleaded before the departmental authorities and also pressed before the learned Single Judge that there was sufficient cause inasmuch as the tenants had become owners of their respective parcels of land on paying the first instalment of the purchase price in pursuance of the order of the Assistant Collector, dated October 31, 1961, we think the tenants have rightly not pressed that aspect of the case before us as there was no justification whatever for their not paying the rent for Kharif, 1961, which had to be paid by January 15, 1962, after the appeals of the landowner had been allowed by the Collector on January 10, 1962. We will, therefore, treat it as established that the failure to pay the rent in question was indeed without sufficient cause.

(8) The only question on which the rival contentions of the parties have been advanced before us in these appeals and on the decision of which the fate of these cases now depends is whether one

single default in the payment of rent after the coming into force of the Act falls or does not fall within the mischief of clause (ii) of section 9(1) of the Act. In other words, the question is whether failure to pay rent of one single crop can amount to failure to pay rent "regularly" within the meaning of the aforesaid provision. The learned Single Judge has held that the expression "failure to pay rent regularly" means that the tenant has been regularly or consistently failing to pay rent to the landowner as contemplated by the agreement. Mr. Hira Lal Sibal, who appeared before us for the appellant, contended that while so construing clause (ii), the learned Single Judge has erroneously assumed that the phraseology used by the Punjab Legislature was "regularly fails to pay rent", whereas in fact the expression used is, "fails to pay rent regularly." The submission of the counsel was that the word "regularly" in section 9(1) (ii) qualifies the word "pay" and not the word "fail". Counsel submitted that if the statute had stated "regularly fails to pay rent", the interpretation placed on the provision by the learned Single Judge would have been correct; but inasmuch as what is in fact stated is "fails to pay rent regularly", a tenant who interrupts the regularity in the payment of rent even by making a single default should be held to fall within the mischief of this clause. According to the decision of the learned Single Judge "contumacy" is implied in clause (ii) of sub-section (1) of section 9, and a tenant cannot be called upon to vacate the land by the summary procedure merely because a single default has occurred in the payment of rent. Mr. Sibal submitted that contumacy may have relevance to the question of a plea of sufficient cause for non-payment if and when raised by a tenant, but has nothing to do with the quantum or limit of recurrence of the default.

(9) Mr. Sibal referred to the judgment of the Court of Exchequer in *Simpson and others* v. *Manley and another* (1), to support his submission to the effect that the word "regularly" means "according to terms of the agreement of tenancy or according to law relating to the time of payment of rent." We are unable to spell out any such general proposition of law from the observations of Lord Lyndhurst, C.B., in the case of *Simpson and others* (1) (supra), to the following effect:—

> "What is there in this guarantee inconsistent with the payments being to be made according to the terms of credit

(1) (1831) 37 Revised Reports 621.

> to be agreed upon the bargain between Thomas Manley and the plaintiffs. The expression "regularly made," in the guarantee, appears to me to mean regularly made according to terms to be agreed upon, and not according to the terms of the trade. If it had been the intention of the defendants to limit the credit within a certain time, they should have so expressed it in the instrument itself."

The only question debated in that case was whether regularity in payments had to be maintained in terms of the agreement between the parties or according to the general terms of trade. No question as to the number of defaults which would amount to breach in regularity of payment was either raised or decided in the *case of Simpson and others* (1). The decision of the Court of Exchequer does not, therefore, furnish us with any guidance in the matter in issue.

(10) In its ordinary literal meaning given in the Shorter Oxford English Dictionary (Third Edition) at page 1692 "regular" can mean "recurring or repeated at fixed times or uniform intervals" or "pursuing a definite course, or observing some uniform principle of action or conduct; adhering to rule ; observing fixed times for, or never failing in the performance of certain actions or duties." In volume 19 of the Encyclopaedia Britannica at page 74 it is stated that the word "regular" is derived from the Latin word "*regularis*" from *regula*, a rule. It means "orderly, following or arranged according to a rule, steady, uniform, formally correct."

(11) Mr. Sibal put to us several forms in which the second clause of section 9(1) could be re-written or recast, but it does not appear to us to make any material difference if the provision "fails to pay rent regularly without sufficient cause," is re-written in any of the following manners:—

(i) "fails, without sufficient cause, to pay rent regularly," or

(ii) "fails in regular payment of rent without sufficient cause."

The only other form in which Mr. Sibal recast the relevant clause in order to show that the language used by the Legislature is not capable of being interpreted to require at least two defaults in payment of rent to entitle a landlord to claim eviction, was as follows:—

"fails regularly to pay rent without sufficient cause."

Mr. Sibal's argument was that if the Legislature had adopted the last-mentioned phraseology, no exception could be taken to the judgment of the learned Single Judge. But it appears to us that the clause could not possibly have been so worded as there is no meaning in suggesting a regular failure. Regularity, in the context, necessarily refers to conduct of payment and cannot in the nature of things refer to the mere failure in making the payment. After carefully considering the matter, I am of the opinion that the word "regularly" is intended to qualify the verb "pay" and not the verb "fails". The tenant would, therefore, be liable to ejectment under section 9(1) (ii) if he fails to maintain regularity in the payment of rent without sufficient cause.

(12) If the word "regularly" is omitted from the relevant clause, it would read, "fails to pay rent without sufficient cause." If this was the statutory provision, non-payment of even one instalment would admittedly have come within its mischief. What then is the meaning of qualifying the requirement of payment by the word "regularly." According to Mr. Sibal, the word is redundant and has been added by the Legislature merely as a surplusage without implying to give it any meaning. We are unable to agree with this contention. According to the settled rules of interpretation of statutes, it is to be presumed that the Legislature does not use any word in the statute uselessly without intending to give any meaning to it. The word "regularly" must be presumed to have been purposefully incorporated in the provision and effect must be given to its ordinary meaning suitable to the particular context in which it occurs

(13) Though the proposed bill and the legislative debates leading to the passing of an Act are not relevant for interpreting a statutory provision contained therein, it is settled law that the same can be looked at for the purposes of seeing the historical background of the statute. The Punjab Security of Land Tenures Bill was introduced in the Punjab Legislative Assembly on December 5, 1952. Relevant part of clause 9 of the Bill was at that time in the following form:—

> 9. Liability of tenant to be ejected : (1) A tenant shall be liable to be ejected if he:—
>
> (i) fails to pay rent regularly without sufficient cause ;

"(ii) is in arrears of rent at the commencement of this Act;

(iii) to (vii) ————————————

Explanation.—For the purposes of clauses (i) and (ii) a tenant shall be deemed to have failed to pay rent regularly or a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of rent or arrears, as the case may be, is not made by the tenant within a period of one month from the date of decree or order, directing him to pay such rent or arrears of rent."

The Bill was then referred to a Joint Select Committee appointed by both the Houses of the Punjab State Legislature. The report of the Joint Select Committee was presented to the Punjab Legislative Assembly on February 24, 1953, and was published in the Punjab Government Gazette (Part V), dated February 27, 1953. The Select Committee suggested the substitution of the following provisions in place of clauses 9(1)(i) and (ii) of the original Bill:—

"9. Liability of tenant to be ejected.

(1) Notwithstanding anything contained in this Act no tenant shall be liable to ejectment before the 30th April, 1954.

(2) A tenant shall, however, after the 30th April, 1954, be liable to be ejected if he—

(i) fails to pay rent regularly without sufficient cause ;

(ii) is in arrears of rent at the commencement of this Act;

(iii) to (vii) ————————————

"*Explanation.*—For the purposes of clauses (i) and (ii), a tenant shall be deemed to have failed to pay rent regularly or a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of rent or arrears, as the case may be, is not made by the tenant within

a period of two months from the date of notice of the execution of decree or order, directing him to pay such rent or arrears of rent."

(14) Discussion on the report of the Joint Select Committee on the bill was taken up in the State Assembly on February 24, 1953. During the course of the discussion, Sardar Chanan Singh Dhutt, M.L.A. moved certain amendments in clause nine. One of those proposed amendments was (page (3) 30 of the Punjab Legislative Assembly Debates, dated February 26. 1953, Volume I) as reproduced below:--

"That in line 1 of part (i) of sub-clause (2) after the word 'regularly' the following words be added:—

'for three years successively.' "

In the course of his speech in support of the amendment Shri Chanan Singh Dhut, stated *inter alia*:—

"This provision is really very stringent. This will be used as a handle to uproot the tenants *every year*. This sub-clause should at least be so amended as to provide that a tenant will be liable to be ejected in case of his failure to pay the rent or Batai for three years continuously."

(15) It is needless to refer to other speeches made in the Assembly in connection with the abovementioned proposed amendment to the relevant clause, but the fact remains that:—

(i) the relevant clause was understood by all concerned to empower a landlord to claim eviction under that clause, at the earliest, 'every year', i.e., in case of default in payment of rent for two crops ;

(ii) the motion for amendment when put to vote was lost ;

(iii) the explanation contained in the section, as it emerged in the Act when it was originally passed in 1953 was in the following terms (page 51 of part IX of 1953 L.L.T.):—

"For the purposes of clauses (i) and (ii), a tenant shall be deemed to have failed to pay rent regularly or a tenant

> shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of rent or arrears, as the case may be, is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such rent or arrears of rent."

The explanation was, however, recast so as to completely delete the reference to clause (ii) contained in the explanation while amending and recasting section 9 at the time of the substitution of the provision by section 9 of the amended Act as introduced by section 6 of the Punjab Security of Land Tenures (Amendment) Act (11 of 1955). After the abovesaid amendment, the relevant provision read as quoted in the opening part of this judgment, that is to say the relevant clause which became clause (ii) of section 9(1), entitled the landlord to claim ejectment of the tenant if the tenant failed to pay rent regularly without sufficient cause; and the entire reference to this clause was omitted from the explanation which was confined to clause (iii) relating to arrears of rent at the commencement of the Act. The result of the amendment of the explanation was that the impediment in the way of seeking immediate ejectment of a tenant who had committed default in regular payment of rent was removed, and the additional safeguard which had been furnished to a defaulting tenant by the explanation to avoid ejectment even after committing default, and even after a decree or order for payment of the amount of arrears was passed by paying off the arrears within two months from the receipt of the notice, was removed.

(16) At one time Mr. Sibal sought to contend that the Legislature could not have allowed a tenant to commit more than one defaults after the coming into force of the Act, when it had provided for the immediate eviction of a tenant in case he was found to be in arrears of rent at the time of the commencement of the Act. As soon, however, as the attention of the learned counsel was drawn to the abovementioned explanation, he dropped that particular argument.

(17) After carefully considering the matter, we are of the opinion that in the context in which the relevant clause is found, it cannot be held to entitle a landlord to eject his tenant merely because the tenant has committed default in payment of rent for one crop, even if there be no sufficient cause for such non-payment. The first reason why we

so hold is that if it was intended to entitle a landlord to claim ejectment on a single default being committed by the tenant, the use of the word "regularly" would become a mere surplusage. Secondly one of the main objects of the Act being to restrict the eviction of tenants, an interpretation which results in advancing the object of the Act in that respect has to be preferred over an alternative interpretation which is likely to defeat the same. Provisions for the ejectment of a tenant who had failed to satisfy a decree for arrears of rent passed against him was already contained in sections 42 to 44 of the Punjab Tenancy Act. A provision on those lines was retained in clause (iii) of section 9(1) for the tenants who were found to be in arrears of rent on the coming into force of the Act. Having provided such a safeguard for tenants falling under clause (iii), it is difficult to hold that for tenants who happen to commit default subsequent to the coming into force of the Act, a sporadic default in payment could result in the taking away of a valuable right of the tenants. Thirdly, the default has to be in the maintenance of regularity and there must, therefore, be recurrence in such a default, in order to bring a case within clause (ii). A default would recur only when the second instalment or rent for the second crop is not paid. I do not mean to suggest that a landlord would not be able to invoke the relevant clause unless the tenant has committed default in the payment of two consecutive moieties of rent. All that we hold in this case is that a single default in payment of rent would not amount to a failure on the part of these tenant to pay rent regularly. Fourthly, it is apparent from the history of section 9 that default in regular payment of rent was intended to imply default in payment of rent for at least one year.

(18) No other point having been argued in this case, we are unable to find any fault with the judgment of the learned Single Judge relating to the interpretation of section 9(1)(ii) of the Act. All these appeals must, therefore, fail and are accordingly dismissed though without any order as to costs.

MEHAR SINGH, C.J.—I agree.

R. N. M.