

(25) The contention that the moment a purchaser makes a demand from the assessee for the return of the sales tax paid by him which was not chargeable, the assessee is bound to return the same, therefore, this amount should not be charged to income tax, is without any merit. The amount received by the assessee in the relevant assessment year is certainly a trading receipt as is clear from the above discussion and the same shall have to be charged for the said relevant year. If and when a purchaser demands the refund of the amount from the assessee and the assessee actually pays back that amount, it will be open to the assessee to claim relief regarding that amount at the time when it is refunded. Similar view was taken by the Calcutta High Court in *Sinclair Murray's case* (7) (supra).

(26) The amount received by the assessee in the relevant assessment year was his trading receipt and he utilised the said amount for the purposes of his business. In other words he charged further this amount in the course of his business and, therefore, the same is liable to be charged to income tax. From what has been stated above, it is obvious that the answer to the question referred to us is that on the facts and circumstances of this case, the Tribunal was not justified in law in excluding from assessment the sum of Rs. 4,155 representing sales tax deposit. Therefore, the reference is answered in the negative with no order as to costs.

Pandit, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Rajendra Nath Mittal, J.

SHANKAR SINGH ETC.,—Appellants.

versus

MANGAL SINGH ETC.,—Respondents.

Regular Second Appeal No. 1159 of 1961.

August 2, 1972.

Punjab Security of Land Tenures Act (IV of 1953)—Punjab Security of Land Tenures Rules (1953)—Rule 11—Punjab Tenancy Act (XVI of 1887)—Section 50—Punjab Tenancy Rules (1909)—Rule 10—Ex-parte order of ejection passed under the Punjab Security of Land Tenures Act—Tenant ejected—Ex-parte order set aside in appeal—No direction for restoration of possession—Revenue Officers—Whether have jurisdiction to restore possession to the tenant—Remedy of suit for possession under section 50 of the Punjab Tenancy

Shankar Singh etc. v. Mangal Singh etc. (R. N. Mittal, J.)

Act—Whether available to such tenant—Collector, while setting aside the ex-parte ejectment order, directing restoration of possession to the tenant—Such direction—Whether valid—Possession on the basis thereof—Whether can be obtained.

Held, that where a tenant is dispossessed from the land of his tenancy in pursuance of an ex-parte order of ejectment passed against him under the Punjab Security of Land Tenures Act, 1953, he can make an application for putting him in possession of the land from which he was dispossessed after that order is set aside. On setting aside of the order of ejectment, the landlord no more remains entitled to retain the property of the tenant and is bound to return the benefit taken by him under the orders of the Court when those orders are set aside. Even if there is no specific provision in the Act, and no order has been passed for restoration of possession at the time of setting aside of the ex-parte order, the officers under the Act have inherent jurisdiction to put the tenant in possession of the land taken from him under the ex-parte orders which stand set aside, on the principle that the acts of Courts should not do injury to any of the suitors. If no remedy is provided in the Act regarding certain acts of the Courts and the Court feels that injustice has been done to a suitor, it can remedy that injustice under its inherent powers. The remedy of suit provided by section 50 of the Punjab Tenancy Act, 1887 is not available to such a tenant because its provisions do not apply to a case of the ejectment of tenants under the lawful orders passed by the Assistant Collector under the Act and which lawful orders are subsequently set aside. (Paras 5, 6 and 7).

Held, that where the Collector, while setting aside the ex-parte order of ejectment against the tenant, orders that the tenant be put in possession of the land from which he had been dispossessed, the order is valid. Possession can be obtained on the basis of such an order passed by the Collector. According to rule 11 of the Punjab Security of Land Tenures Rules, 1953, wherever there is no rule prescribing the procedure of the Revenue Officers under the Act, it is to be regulated as far as may be by the procedure prescribed for the Revenue Officers by the provisions of the Punjab Tenancy Act, 1887 and the rules thereunder. Rule 10 of the Punjab Tenancy Rules, 1909 makes it clear that orders of delivery of possession of immovable property are to be enforced in the manner provided in the Code of Civil Procedure for the time being in force in respect of the execution of a decree whereby a civil Court has adjudged ejectment from or delivery of possession of such property. Thus the order of the Collector for delivery of possession to a tenant can be executed under rule 10 of the Punjab Tenancy Rules read with rule 11 of the Punjab Security of Land Tenures Rules, 1953 and the Assistant Collector has the same powers which the Civil Court has for execution of decree of ejectment from or delivery of possession of that property. (Para 8).

Regular Second Appeal from the decree of the Court of Shri Ram Lal Aggarwal, District Judge, Jullundur, as ex-officio Additional District Judge, Hoshiarpur, dated 11th July, 1961 reversing that of Shri Hari Kishan Mehta, Senior Sub-Judge, Hoshiarpur, dated 29th April, 1960 and dismissing the plaintiffs suit and leaving the parties to bear their own costs.

G. C. Garg, Advocate, for the appellants.

Bhagirath Das, Advocate with S. K. Hiraji and B. K. Jhingar, Advocates, for the respondents.

JUDGMENT

R. N. Mittal, J.—This appeal has been filed against the judgment and decree of the District Judge, Jullundur, dated July 11, 1961 by which he reversed the judgment and decree of the trial Court dismissing the suit of the plaintiffs.

(2) The facts which have led to this litigation are that Mst. Swarn Lata defendant No. 3 was the owner of the property in dispute and the defendants Nos. 1 and 2 were the tenants under her. Defendant No. 3 filed proceedings for recovery of rent and the eviction of the defendants 1 and 2 under the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the 'Tenures Act) from the land in dispute and obtained an *ex-parte* order of ejectment against them. They put in an application for setting aside the *ex-parte* order before the Assistant Collector, who passed the order of ejectment, but he rejected the said application. The defendants Nos. 1 and 2 filed an appeal against the said order before the Collector which was accepted by him and he remanded the case for trying the same on merits. Before the hearing the appeal, defendant No. 3 had taken possession of the land in dispute from defendants Nos. 1 and 2 and, therefore, it was also ordered by the Collector that they should be restored the possession of the property in dispute. Defendants Nos. 1 and 2 put in an application for restoration of possession before the Assistant Collector, but the same was dismissed by him. They filed an appeal against that order to the Collector, who accepted it and directed that the possession should be delivered to them. After the passing of the said order Swarn Lata sold the property in dispute to the plaintiffs and defendant No. 4, and the plaintiffs instituted the present suit for declaration that they and the defendant No. 4 were the owners of the land in dispute and the order of the Collector directing the restoration of possession to defendants Nos. 1 and 2 was illegal, without jurisdiction and they

Shankar Singh etc. v. Mangal Singh etc. (R. N. Mittal, J.)

had no right to take possession in pursuance of that order. They also prayed that defendants Nos. 1 and 2 be enjoined from taking possession of the land in dispute in pursuance of the illegal order of the Collector. The suit was resisted by the defendants Nos. 1 and 2, who denied the allegations of the plaintiffs and submitted that the order passed by the Collector was legal and they were entitled to the possession of the property on the basis of that order. They also stated that the Civil Court had no jurisdiction to try this suit. On the pleadings of the parties following issues were framed:—

- (1) Are the defendants occupancy tenants or tenants at will of the land in dispute ?
- (2) Had the Civil Court no jurisdiction to try the suit ?
- (3) Are the plaintiffs and defendant No. 4. owners of the land in dispute ?
- (4) Relief.

(3) The trial Court decided issues Nos. 1 and 2 against the defendants and issue No. 3 in favour of the plaintiffs and decreed their suit. On appeal, the District Judge upheld the findings of the trial Court on issues Nos. 1 and 3, but reversed its finding on issue No. 2 and accepted the appeal and dismissed the suit. It may be mentioned that during the pendency of the appeal, Ram Chand died and respondents 2 to 8, his widow Tejo and children were impleaded as parties. The plaintiffs having felt aggrieved against the said Judgment and decree of the first Appellate Court, have come up in appeal to this Court.

(4) The only submission which was made by the learned counsel for the appellants was that the order of the Collector for restoration of the possession passed under the Act was without jurisdiction as according to him he had no power to order restoration of the possession to Mangal Singh and Ram Chander, who had already been ejected. He further submitted that Section 144 of the Code of Civil Procedure (hereinafter referred to as the Code) did not apply to the proceedings before the Revenue Officers under the Act and they could only get the possession back by institution of a suit under Section 50 of the Punjab Tenancy Act. On the other hand, the learned counsel for the respondents submitted that the Courts have got inherent powers to restore the possession of the properties in case the order in pursuance of which the tenants had been ejected, is set

aside. He submitted that if there was no provision in the Punjab Security of Land Tenures Act, they could pass an order to remedy the injustice which the tenants would have otherwise suffered.

(5) I have heard the contentions of the learned counsel for the parties and am of the view that the contention of the learned counsel for the appellants does not hold good. The *ex-parte* order of ejectment passed by the Assistant Collector had been set aside by the Collector,—*vide* his order dated November 6, 1957 (Exhibit D. 12). In that order he observed that the tenants be put in possession on the land in dispute from the next year. I do not find any fault with the said order. Swarn Lata had been put in possession of the property in dispute by virtue of the order of the Assistant Collector and she could not make a grievance regarding restoration of possession if that order of the Assistant Collector had been set aside in appeal. She could not resist the order of the Collector for restoration of the possession as the order on the basis of which she was put in possession was no longer in existence. It cannot be said that the tenants had got only a remedy by institution of suit for getting the possession under Section 50 of the Punjab Tenancy Act, which section has been enacted for a different purpose. The reading of the said section clearly shows that its provisions would not be applicable in case of the ejectment of tenants under the lawful orders of an Assistant Collector under the Tenures Act and which subsequently have been set aside. In my view the provisions of section 50 of the Punjab Tenancy Act are not applicable as submitted by the learned counsel for the appellants.

(6) One of the principles that has been recognised by the Courts in that the acts of Courts should not do injury to any of the suitors. In case no remedy is provided in the Act regarding certain acts of the Court and the Court feels that injustice has been done to a suitor, it can remedy that injustice under its inherent powers. This principle has been judicially noticed in *Jai Berham and others v. Kedar Nath Marwari and others* (1), wherein it has been observed as follows :—

One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression 'the act of the Court' is used, it does not mean merely the act of the primary Court or of any intermediate Court of Appeal, but the act of the

(1) A.I.R. 1922 P.C. 269.

Shankar Singh etc. v. Mangal Singh etc. (R. N. Mittal, J.)

Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the Highest Court which finally disposes of the case. It would be inequitable and contrary to justice that the judgment-debtor should be restored to his property without making good to the auction purchaser the moneys which have been applied for his benefit."

(7) This principle has also been noticed by the Supreme Court in *Mrs. V. G. Peterson v. Forbes and another* (2) wherein the question was whether the rightful owner of the property would have it or the Government which had come into possession of the property without being a claimant to it because of an erroneous order of the court should retain it, if it was found that the order was wrong. It was held that the question must be decided in favour of the rightful owner of the property. Their Lordships placed their reliance on the observations of Cairns, L. C. in *Rodger v. Comptoir D'Escompte de Paris* (3) which are as follows :—

"One of the first and highest duties of all courts is to take care that the act of the Court does no injury to any of the suitors....."

The aforesaid observations aptly apply in the present case. On setting aside the *ex parte* order of ejectment, the landlord did not remain entitled to retain the property of the tenants. She was bound to return the benefit taken by her under the orders of the court when those orders were set aside. Even if there is no provision in the Act, the officers under the Tenures Act have inherent jurisdiction to put the tenants in possession of the lands taken from them under the *ex parte* orders. The argument that they should be left to seek their remedy by way of separate suit, does not hold good. The above principle also holds good even if at the time of setting aside the *ex parte* order, no order has been passed for restoration of possession. If a person against whom an *ex parte* order of ejectment has been passed and who on that basis has been ejected, he, after that order has been set aside, can make an application for putting him in possession of the property from which he was dispossessed in pursuance of that order.

(8) In the present case, the Collector while setting aside the *ex parte* order also observed that the tenants be put in possession of

(2) A.I.R. 1963 S.C. 692.

(3) (1871) 3 P.C. 465=40 LJPC 1.

the lands from which they had been dispossessed. The order of the Collector is valid and cannot be challenged. On the basis of such an order even possession can be obtained under the provisions of the Tenures Act. Rules have been framed under that Act, which are known as the Punjab Security of Land Rules, 1953 (which are hereinafter referred to as the rules). Rule 11 of the rules prescribed procedure which is in the following terms:—

“The procedure of Revenue Officers in matters under the Punjab Security of Land Tenures Act, 1953, and these rules for which a procedure is not prescribed thereby, shall be regulated as far as may be, by the procedure prescribed for Revenue Officers, by the provisions of the Punjab Tenancy Act, 1887, and the rules thereunder.”

The aforesaid rule says that wherever there is no rule prescribing the procedure of the Revenue Officers under the Tenures Act, it shall be regulated as far as may be by the procedure prescribed for the Revenue Officers by the provisions of the Punjab Tenancy Act, 1887 and the rules thereunder. The rules have also been framed under the Punjab Tenancy Act, 1887, which are known as the Punjab Tenancy Rules, 1909. Rule 10 provides for execution of order of ejectment etcetra. The said rule is as follows :—

“Orders of ejectment from, and delivery of possession of immovable property shall be enforced in the manner provided in the Code of Civil Procedure for the time being in force in respect of the execution of a decree whereby a Civil Court has adjudged ejectment from, or delivery of, possession of such property.”

On reading the aforesaid rule, it will be clear that orders of delivery of possession of immovable property shall be enforced in the manner provided in the Code of Civil Procedure for the time being in force in respect of the execution of the decree, whereby a Civil Court has adjudged ejectment from or delivery of possession of such property. The order of the Collector for delivery of possession to the tenants can be executed under rule 10 of the Punjab Tenancy Rules, 1909 read with rule 11 of the Rules and the Assistant Collector shall have the same powers which the Civil Court has for execution of decree of ejectment from or delivery of possession of that property. The said rules are very clear and are not subject to any other interpretation than the one, I have taken. If the Revenue Officer passes

Registrar of Companies Punjab, Himachal Pradesh and Chandigarh,
 Jullundur *v.* M/s. Himprastha Financer's P. Ltd. Simla, etc.
 (Gopal Singh, J.)

an order for delivering the possession in the circumstances stated above, those officers have got powers to deliver possession under the said rules.

(9) In view of the above discussion, I am of the view that the orders of the Revenue Officers which have been challenged as being illegal and *ultra vires* are valid and do not suffer from any defect. Section 25 of the Security Act provides that the validity of any proceeding or order taken or made in that Act shall not be called in question in any Court or before any other authority. The orders of the revenue officers under the Security Act, have been held by me to be legal and valid. Those orders, therefore, cannot be challenged in the Civil Court and the jurisdiction of the Civil Court is barred under section 25. I, therefore, do not find any force in the appeal which is dismissed with costs.

B. S. G.

REVISIONAL CRIMINAL

Before Gopal Singh and D. S. Tewatia, JJ.

REGISTRAR OF COMPANIES, PUNJAB, HIMACHAL PRADESH
 AND CHANDIGARH, JULLUNDUR,—*Petitioner*

versus

M/S. HIMPRASTHA FINANCERS P. LTD., SIMLA ETC.,—
Respondents.

Criminal Revision No. 142-R of 1970

August 16, 1972.

Probation of Offenders Act (XX of 1958)—Sections 3 and 11(2)—Code of Criminal Procedure (Act V of 1898)—Section 439—Order passed under section 3 of the Act—Remedy by way of appeal under section 11(2) not availed—High Court—Whether can interfere in the order under section 439(1) of the Code.

Held. that the remedy of a revision will be barred by virtue of sub-section (5) of section 439 of the Code of Criminal Procedure, 1898, only when two conditions, as specified therein, are satisfied : (i) An appeal must lie under the Code and (ii) the revision must be filed by the party at whose instance, the appeal is competent. The scrutiny of the sub-section admits of no doubt that a party, who has no right to maintain an appeal under the Code but is entitled to prefer an