APPELLATE CIVIL

Before Harbans Singh, J.

NIRMAL SINGH AND OTHERS,—*Appellants*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents*

R.S.A. No. 178 of 1964.

1964

May, 29th.

Punjab Public Premises and Land (Eviction and Rent Recovery) Act (XXXI of 1959)—S.2 (d)—Land belonging to Government given on lease to District Sailors, Soliders and Airmen's Board for 99 years—Board making sub-leases in favour of different persons—Sub-lessees—Whether can be evicted under the Act.

Held, that the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, are not meant for the assistance of the lessees from the Government to get their tenants evicted. The words 'belonging to' in clause (d) of section (2) of the Act have to be understood not necessarily to mean "owned by" but as indicative of complete control and dominion over the property in dispute. So

far as the State Government is concerned, after the grant of lease for 99 years, it has been left with no control or dominion over the land excepting a right of reversion at the expiry of the lease or on the breach of any terms, if so provided in the lease, and meanwhile the State Government is entitled only to recover the rent fixed under the lease. The real dominion over the land is that of the Board subject, of course, to the terms of the lease and so the Board cannot evict its tenants from the land by having recourse to these provisions.

Held, that the Act is meant to provide a speedy method of recovery of possession from unauthorised tenants settled on the land which is managed by the State Government itself and does not apply to the sub-tenants brought on the land by the lessee from the State Government.

Held, that as between the State Government and the Board, the premises would be "public premises" belonging to the State Government but, as between the Board and the tenants settled by it on the land, the relationship is only of private persons and the demised land must be treated as belonging to the Board and not the State Government.

Regular Second Appeal from the decree of the Court of Shri C. G. Suri, District Judge, Ludhiana, dated the 31st January, 1964, affirming with costs that of Shri Om Parkash, Sub-Judge, 1st Class, Ludhiana, dated the 30th August, 1961, dismissing the plaintiffs' suit with costs.

H. L. SARIN AND SHRI V. P. SOOD, ADVOCATES, for the Appellants.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL AND VIDYA PARKASH SARDA, ADVOCATE, for the Respondents.

JUDGMENT

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HARBANS SINGH, J.—Facts giving rise to this regular second appeal may briefly be stated as under: A plot of land within the limits of Municipal Committee, Ludhiana, belonging to the State Government had been given on lease to District Sailors, Soldiers and Airmen's Board, Ludhiana (hereinafter referred to as the Board), for a period of 99 years. This was sometimes prior to 1953. After taking this lease, the Board let out parts of the demised land to different persons including the plaintiffs-appellants in the present case. The plaintiffs built *khokhas* over the respective plots demised to them and carried on their business. It is not disputed that thereafter the plaintiffs had been regularly paying rent of those demised

plots to the Board. Later, the President of the Board gave a notice, Exhibit D. 2, to these tenants on 13th of May, 1960, to vacate the premises by 31st of May, 1960. The plaintiffs failed to comply with the request made. Thereupon the Collector, purporting to act under section 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (Punjab Act 31 of 1959) (hereinafter referred to as the Act), sent a letter intimating them that they had failed to vacate the premises in spite of a notice by the President of the Board and had become unauthorised occupants, and asked them to show cause why an order of eviction should not be made. They did show cause but the Collector did not find in their favour and thereafter they instituted the suit, out of which the present appeal has arisen, seeking a declaration that they were entitled to hold the rented land in their possession till such time as their tenancy is terminated according to law and that the order of the Collector above-mentioned for their eviction was bad and ineffective and as a consequential relief, sought an injunction restraining the Collector from taking any proceedings under the Act and ejecting them. One of the grounds taken by them, namely, that the Act was *ultra vires,* is no longer available to them and need not be considered. The trial Court came to the conclusion that the civil Court has jurisdiction to try the suit and, holding that the procedure laid down in the Act was correctly followed by the Collector, dismissed the suit. When the appeal filed by the plaintiffs came before the lower appellate Court, the *vires* of the Act had already been decided and the main stress was laid on the ground that the Collector had acted beyond his jurisdiction because in the present case the plaintiffs were occupying the land under the Board. The learned lower appellate Court repelled this argument and observed as follows:—

> "I find that the plaintiffs-appellants had failed to show that the Collector's finding that their occupation was unauthorised is incorrect or erroneous. For this, it would have been necessary for the plaintiffs to prove what were the terms and conditions of the lease granted by the Government to the D.S.S.A.B. (the Board) and when the term of that lease expired and whether according to this lease in favour of D.S.S.A.B. the latter was in a position to grant further leases to

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others and for how long. The appellants have failed to examine any evidence with regard to the terms and conditions of the lease in favour of the D.S.S.A.B. and there is nothing to suggest that the appellants were in authorised occupation of the land under the wooden cabins in dispute."

It was further stressed that the office of the President of the Board was held by the Collector of the District *ex officio* and that the notices issued to the appellants for vacating the premises by 31st of May, purported to be signed on behalf of the President of the Board and the mere fact that it was signed in routine by the General Assistant for the President, makes no difference. Aggrieved by this order, the plaintiffs have come up in appeal.

The facts, as enumerated by me above, are clearly established on the record from the statement of S. Narinjan Singh, the Secretary of the Board, himself. In view of that statement, I feel that it is altogether unnecessary to go into the question as to what were the terms on which the land was leased to the Board by the Government. In case the Board has committed any breach of those terms, it is conceded, that the State Government could evict the Board under the Act, for, obviously, as between the State Government and the Board, the State Government was the owner of the land and the Board was an occupier under the terms of the lease. If the Board had incurred forfeiture of the lease or the State Government had terminated their lease in their favour under the terms of that lease, the Board would cease to be an authorised occupant and could be evicted. Once the Board incurs the liability to be evicted, then all subordinate titles created by the Board will also go. Here, however, the Board is not being evicted. In fact, the Board is trying to evict sub-tenants brought by it on the land, and the sole question that arises is whether as between the Board and the appellants, who are the sub-tenants of the Board, the premises can be treated as "public premises" within the meaning of the Act. "Public premises", is defined in sub-clause (d) of section 2 of the Act as follows:—

" 'public premises' means any premises belonging to or taken on lease or requisitioned by or on behalf

of the State Government * * * and includes any premises belonging to any District Board, Municipal Committee, Notified Area Committee or Panchayat."

It is conceded that the Board is not specifically mentioned as one whose premises fall in the category of "public premises". The argument on behalf of the State is that inasmuch as the land is owned by the State it continues to be covered by the definition of "public premises" notwithstanding the fact that the same had been given on long lease of 99 years to a private person (i.e., the Board in this case). I am definitely of the view that the provisions of the Act are not meant for the assistance of the lessees from the Government to get their tenants evicted and I am inclined to agree with the contention of the learned counsel for the appellants that the words "belonging to" have to be understood not necessarily to mean "owned by" but as indicative of complete control and dominion over the property in dispute. So far as the State Government is concerned, after the grant of lease for 99 years, they have been left with no control or dominion over the land excepting a right of reversion at the expiry of the lease or on the breach of any terms, if so provided in the lease, and meanwhile the State Government is entitled only to recover the rent fixed. The real dominion over the land is that of the Board subject, of course, to the terms of the lease. Nothing has been brought out on the record to indicate that the Board is not entitled to sublet the premises and, in any case, even if they are not so entitled, as stated above, it is open to the State Government to take action to evict the Board, but that is not the matter before us. If the view taken by the Courts below and pressed by the learned Additional Advocate-General is accepted, it will lead to great anomalies. If, for example, the Board takes lease of two adjacent plots, one from the State Government and the other from a private person and then gives the two bits of land to various tenants on lease then according to the State Government, if the Board wants to evict any one of the tenants settled on the land taken on lease from the State Government, it can just give a notice and after the expiry of the notice, treat the tenant as unauthorised occupant and through the Collector throw him out, under the provisions of the Act; whereas it is conceded that so far as the tenants settled on the adjoining land

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taken on lease from a private person are concerned, the only way to get them evicted is by recourse to the ordinary law of the land viz., by filing applications for their ejectment to the Rent Controller. I have no doubt in my mind that the Act is meant to provide a speedy method of recovery of possession from unauthorised tenants settled on the land which is managed by the State Government itself and does not apply to the sub-tenants brought on the land by the lessee from the State Government.

The meaning of the words "belonging to" was the subject-matter of a case decided by Mehar Singh, J. of the then Pepsu High Court in Civil Miscellaneous 253 of 1954 (*Bishan Singh v. Mahant Sadhu Ram*): In the ownership column of the revenue records, the land in dispute in that case was recorded in the name of the State Government, while in the cultivation column it was shown in possession of Sant Kamliwala, who maintained a charitable *dera*. The question for decision was whether the same was exempt from tax imposed by Act 8 of 1953, which provided as follows:—

"The provisions of this Act shall not apply to—

(a) * * *;

(b) lands belonging to any religious or charitable institution;"

After considering the observations of Baron Martin in *The Attorney-General* v. *The Oxford, Worcester and Wolverhampton Railway Company and others* the learned judge came to the conclusion that the word "belonging" does not always mean "owned"; in the popular sense, it means that to which a person has a right to use. Same view was taken by Tendolkar J. In *Laxmipat v. Larsen and Toubro Ltd.* (2). In paragraphs 9 and 10 at pages 208 and 209 of the report, the learned Judge discussed a number of English cases where the words "belonging to His Majesty" were considered in relation to claim for damages arising out of salvage services rendered by any ship and came to the conclusion that temporary ownership arises when there is a demise of property and full dominion and control

(1) 31 L.J. Exchequer 218 at p. 227.
(2) A.I.R. 1951 Bom. 205.

over the property is passed by the absolute owner and the rest of the property also falls on the lessee. That was also a case where vacant land had been leased for a number of years for building purposes by the Port Trust. The lessee constructed buildings and demised those buildings to various tenants. It was held that the buildings must be treated to be owned by the lessee and not by the Port Trust and, therefore, subject to the Bombay Rents, Hotels and Lodging House Rates Control Act and dealing with this question at page 209 of the report it was observed as follows:—

> "In the case of a lessor and a lessee such as we are considering, the lessee has the right of reversion which of course is not tangible immovable property but an intangible thing. He has also a right of re-entry under the terms of the lease and he has further a right by covenant to claim the building upon termination of the lease or upon its determination in any other manner. provided by the lease. With regard to all other rights in the property, these vest completely in the lessee for the limited period of time. It seems to me that it is the lessee who is under the circumstances the owner qua, at any rate, those to whom he has let or sublet such premises. It is consistent with dual ownership qua the lessee it may be that the lessor is the owner of the property; and in any proceedings between the lessor and the lessee it would be possible to say that the premises belonged to the lessor and not to the lessee. That is not the case before me."

I respectfully agree with these observations. As indicated above, I feel that as between the State Government and the Board, the premises would be "public premises" belonging to the State Government but, as between the Board and the tenants settled by it on the land, the relationship is only of private persons and the demised land must be treated as belonging to the Board and not to the State Government.

In view of the above, it is not necessary to discuss the second point raised by the learned counsel for the appellants that, in any case, the appellants were not in unauthorised occupation, as provided under section 3, because admittedly they do not fall under clause (a) and so far as

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clause (b) is concerned, their lease does not come to an end by the Board (a private person) giving a notice of termination, in view of the Rent Restriction Act. It is also not necessary to go into the point raised in reply on behalf of the learned Additional Advocate-General that the question whether a person was or was not in unauthorised occupation, is a matter for the Collector to decide subject to an appeal to the Commissioner and the decision arrived at by the Collector or the Commissioner is not subject to the jurisdiction of the civil Court in view of section 10 of the Act according to which such decisions cannot be called in question in any original suit, application or execution proceedings.

For the reasons given above, therefore, I accept this appeal, set aside the judgment and the decree of the Courts below and decree the suit as prayed. The appellants will have their costs here as well as in the Courts below.

R.S.

CIVIL MISCELLANEOUS