

Custodian-
General, Delhi
v.
Rikhi Ram
and another
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facts of this case. They were concerned mainly with the interpretation of the provisions of section 48 of the Administration of Evacuee Property Act which declares that the decision of the Custodian as to a sum due to the State Government or to the Custodian under the provisions of this Act shall be final.

As the power to decide whether a certain property is or is not evacuee property vests in the Custodian and not in the Courts, I would allow the appeal, set aside the order of the learned Single Judge and restore that of the Deputy Custodian-General.

FALSHAW, J.—I agree.

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APPELLATE CIVIL

Before Shamsheer Bahadur, J.

BOHGA SINGH *alias* KISHAN SINGH AND ANOTHER,—
Appellants.

versus

HARNARAIN SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 331(P) of 1954.

1959
Sept. 24th

Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act (III of 1953)—Section 2 (h)—Occupancy tenant ejected in 1942 under Section 38 of the Punjab Tenancy Act (XVI of 1887) for failure to cultivate the land for more than one year without sufficient cause—Whether amounts to abandonment—Abandonment—Meaning of.

Held, that the technical meaning of the word “abandonment” as used in Section 38 of the Punjab Tenancy Act, 1887, is to be attached to the proviso to clause (h) of Section 2 of the Patiala and East Punjab States Union Occupancy

Tenants (Vesting of Proprietary Rights) Act, 1953. Admittedly, the order passed in the year 1942 for dispossession of the appellants was made because of their failure to have cultivated the land under their tenancy for the requisite term and in consequence of that order they vacated the land. In these circumstances the order passed by the Revenue Officer in the year 1942 comes within the ambit of the proviso to clause (h) of section 2 of the Patiala and East Punjab States Union Occupancy Tenants (Vesting of proprietary Rights) Act, 1953 and as the appellants had abandoned their tenancy they cannot be deemed to be occupancy tenants within the meaning of the said Act.

Held, that "abandonment" is "an absolute relinquishment, the relinquishment or renunciation of a right, or of property, a giving up of some thing to which one is entitled; the act of foresaking or leaving; a total desertion". In its essence, abandonment means the intentional relinquishment of a known right. There is an element of volition and naturally if one has been compelled to leave what he has, it cannot be regarded abandonment, in this sense of the term. By implication it excludes an act of dispossession through a process of Court.

Second Appeal from the decree of the Court of Shri Murari Lal Puri, District Judge, Barnala, dated the 31st day of August, 1954 affirming with costs that of Shri Joginder Singh, Sub-Judge, 2nd Class, Phul, dated the 31st day of March, 1954 decreeing the plaintiffs' suit as prayed for with costs.

SOHAN LAL GUPTA, for Appellants.

D. S. NEHRA, for Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—S. Harnarain Singh and S. Gurdev Singh, sons of S. Nanak Singh of Bahadur brought a suit for possession of agricultural land measuring 21 *bighas* and 17 *biswas* of which forcible possession had been aken by Bogha Singh and others.

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In order to appreciate the point involved in this appeal, it would be necessary to set out very

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briefly the course of litigation between the parties. The defendants Bogha Singh and others admittedly were occupancy tenants under S. Harnarain Singh. On the allegation that Bohga Singh and others had failed to cultivate the land in their occupation, an order dated 11th of Chet, 1998 Bk. (24th of March, 1942), was passed on the petition of S. Harnarain Singh making an order of dispossession of the occupancy tenants under section 38 of the Punjab Tenancy Act. In pursuance of that order, possession was handed over to the landlords a few months later. Subsequent entries in the Jamabandis show the land to be under the ownership and possession of the landlords. Bohga Singh and others took forcible possession of this land on 4th of September, 1952, and thereupon the present suit was brought by the landlords Harnarain Singh and Gurdev Singh for ejectment of the defendants Bohga Singh and others. This suit was decreed by the Subordinate Judge on 31st of March, 1954, and the appeal against this decree has been dismissed by the learned District Judge, Barnala.

In Second Appeal, it has been urged by the counsel for Bohga Singh and others that they are entitled to remain in possession of the land as the proprietary rights of landlords in it have been extinguished by virtue of section 3 of the Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, (Act No. 3 of 1953). Under clause (h) of section 2 of this Act, an occupancy tenant means "a person who, at the commencement of this Act, is or is deemed to be an occupancy tenant." Under the Explanation to sub-clause (iv), a person is deemed to be an occupancy tenant if he is recorded as an occupancy tenant in the annual records on the 11th March, 1940, and has been dispossessed or deprived of his

rights to the occupation of the land at any time after the 11th March, 1940, but has not been granted any relief under the Patiala and East Punjab States Union Abolition of Biswedari Ordinance, 2006 Bk." Bohga Singh and others were recorded as occupancy tenants in the annual records on 11th March, 1940, and they were dispossessed or deprived of their rights sometime after 11th March, 1940. Under this clause, Bohga Singh and others would certainly be regarded as occupancy tenants. There is however, a proviso to clause (h) of section 2 that "no person who has abandoned his tenancy shall be deemed to be an occupancy tenant within the meaning of this clause." The dispute, therefore, narrows down to the proposition whether Bohga Singh and others had abandoned their tenancy.

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Abandonment strictly speaking is "an absolute relinquishment, the relinquishment or renunciation of a right, or of property ; a giving up of something to which one is entitled ; the act of forsaking or leaving ; a total desertion" (*vide* Corpus Juris Secundum, Volume I, page 4). In its essence, abandonment means the intentional relinquishment of a known right. There is an element of volition and naturally if one has been compelled to leave what he has, it cannot be regarded abandonment in this sense of the term. By implication it excludes an act of dispossession through a process of Court. Under the Punjab Tenancy Act, however, the term Abandonment has been given a special meaning. Section 38 of the Punjab Tenancy Act purports to deal with "Abandonment of Tenancy" by an occupancy tenant and is stated as thus :—

"If a tenant having a right of occupancy fails for more than one year without sufficient cause to cultivate his tenancy,

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either by himself or some other person, and to arrange for payment of the rent, thereof, as it falls due, the right of occupancy shall be extinguished from the end of that year."

This is the technical meaning of the word "abandonment" as used in the Punjab Tenancy Act and, in my judgment, it is this meaning which is to be attached to the proviso to clause (h) of section 2 of the Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953. Admittedly, the order passed in the year 1942, against Bohga Singh and others was made because of their failure to have cultivated the land under their tenancy for the requisite term. The application to have their rights of occupancy extinguished was opposed by Bohga Singh and others but the matter on which the parties joined issue was decided in favour of the landlords. Bohga Singh and others accepted this position and the land was vacated by them. This situation remained till the year 1952, when the appellants took forcible possession. It has been contended by Mr. Sohan Lal Gupta, the learned counsel for the appellants, that the order passed under section 38 of the Punjab Tenancy Act was not valid inasmuch as the proceedings had started by way of an application and not as a regular suit. It is not denied that the proceedings were initiated in the form of an application under section 38, but Mr. Nehra has contended that there can be no dispute or controversy at this stage regarding the validity of that order and I am inclined to agree with him.

This is the only point which has been urged in this appeal. In my opinion, the Courts below have arrived at the right conclusion in holding

that the order passed by the Revenue Officer comes within the ambit of the proviso to clause (h) of section 2 of the Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act, and as the appellants had abandoned their tenancy they cannot be deemed to be occupancy tenants within the meaning of the Act. This appeal fails and is dismissed. I, however, make no order as to costs.

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LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

HAZARA SINGH,—Appellant.

versus

THE CUSTODIAN OF EVACUEE PROPERTY, PEPSU,
PATIALA, AND OTHERS,—Respondents.

Letters Patent Appeal No. 7 of 1957.

Administration of Evacuee Property Act (XXXI of 1950)—Section 48—Amendment of, by Administration of Evacuee Property (Amendment) Act (LXXXXI of 1956)—Scope of—Whether creates exclusive jurisdiction in the Custodian—Amendment—Whether retrospective—Interpretation of statutes—Amendment of an Act—Whether retrospective—Rules to determine—Curative, Remedial and procedural statutes—Meaning and scope of—Amendments of such Acts—Whether retrospective.

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Held, that Section 48 of the Administration of Evacuee Property Act, 1950, as amended by the Amendment Act of 1956, confers exclusive jurisdiction on the Custodian to decide whether a sum is or is not payable to Government or to the Custodian and prescribed the administrative procedure which should be followed by the Custodian in arriving at a correct conclusion. Jurisdiction of the civil Court is completely barred. *Prima facie* therefore, it is within the power