

Before K. Kannan, J.

SEWA SINGH AND OTHERS,—Petitioners

versus

**THE FINANCIAL COMMISSIONER (APPEALS), PUNJAB,
CHANDIGARH AND ANOTHER,— Respondents**

CWP No. 2913 of 1985

9th May, 2011

Constitution of India, 1950—Art. 226 & 227—Punjab Security of Land Tenures Act, 1953—S. 9(2)(iii) & 14-A(2)(i)—Land Reforms Act, 1953—S. 18—Nature of rights within tenants permissible area—owners and tenants permissible land declared under Land Reforms Act—Gift by owners to sons—Donee filing petition under section 9(2)(iii) seeking ejectment on ground of default in payment of rent—Also seeking relief under section 14-A(2)(i)—Petition dismissed by Assistant Collector Grade-I—Appeal allowed by Collector and possession taken by landlord—Appeal filed by tenant comes (Appeal) held landlord entitled and rent but could not seek eviction—Revision dismissed by Financial Commissioner.

Held, that tenant does not become owner as he had not exercised his rights under section 18. Each of the four Donees, having attained age of majority, are to be treated as one separate unit. Property continued with land owners and fell to his sons under the gift deeds. Could not said to be holding property in excess of the Punjab Land Reforms Act. **Chander Bhan versus F.C., Haryana AIR 1982 Punjab & Haryana 76 (FB)** relied upon.

(Paras 5 & 6)

R.C. Setia, Sr. Advocate with Vishal Rajan, Advocate, *for the petitioners*

K.S. Sivia, DAG, Punjab for respondent No. 1 to 4

None for respondent No. 5

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K. KANNAN, J. (ORAL)

(1) All the three writ petitioner are connected and deal with the issue of nature of right that a tenant holds within the tenants' permissible area as described under the Punjab Security of Land Tenures Act, 1953. The facts are not in dispute.

(2) Fakir Chand was owner of 78.30 standard acres under the Land Reforms Act, 1953 (for brevity, 'the 1953 Act'). Under 1953 Act, the land owner was entitled to retain 30 standard acres. His permissible area was declared by 30 standard acres and the permissible area of tenants' holding was 32 standard acres and the properties that had been sold which was with the vendees holding was in an extent of 16-6½ standard acres. In the manner in which, the holdings got distributed, there was no surplus. Fakir Chand who held his own 30 standard acres and who was the owner of 32.7 standard acres which was the permissible holding of tenants gifted the property to his four sons on 22nd October, 1971. The respondents No. 5 and 6 herein were the persons who were holding the property within the tenants' permissible area. Sewa Singh, petitioner before this Court and who was a donee, filed a petition for ejectment under Section 9(2)(iii) of the Punjab Security of Land Tenures Act on the ground of default of payment of rent and under Section 14-A(2)(i) for obtaining eviction for non-payment after notice. These petitions had been dismissed by the Assistant Collector Grade-I and the appeals filed by the landlord to the Collector were accepted and in pursuance of the decision, the landlord took possession of the property also. Further appeals had been filed by the tenants to the Commissioner (Appeals), who gave a finding that the landlord was entitled to recover the rent for the use of the land, but shall not have any right to seek ejectment of the tenants. Against this order, a revision had been filed to the Financial Commissioner by the petitioner, which has been dismissed. These orders passed by the Financial Commissioner, are in challenge in the three connected writ petitions.

(3) The Collector, who accepted the contention of the landlord in ordering ejectment, found that the decision of the Assistant Collector, Grade-I that the tenant could not be ejected by the landlord from tenants permissible area, was not correct. A tenant holding property within the

permissible area and who had not purchased the land under tenancy, had the same obligation for payment of rent as an ordinary tenant had. The Collector's reasoning was perceived by the Commissioner to project two conundrums: (i) if the land owner was allowed to eject a tenant in terms of Section 14 of the Punjab Security of Land Tenures Act, then the effect of ejectment would be to give additional area to the land owner in addition to his permissible area declared, (ii) if a tenant actually vacates the property in his possession, it can never pass to the land owner for the area released would always become available only to State Government for utilization under the scheme and the land owner could not take back possession. The Commissioner found that the tenant's obligation to purchase of property was actually pending at that time but since the purchase rights did not fructify, the land owner would be free to recover the rent for the use of land but did not have right to secure ejectment of the tenants. When this order rejecting the land owners' right to seek an ejectment was challenged before the Financial Commissioner, the Financial Commissioner held that the property held within the permissible area of the tenant cannot be allowed to go back and there was no question of release of the tenants' permissible area in the lands of the landowner.

(4) Mr. R.C. Sethia, learned Senior counsel appearing on behalf of the petitioners urges that the Punjab Security of Land Tenures Act does not make a property beyond the permissible area for land owner to be treated as a surplus area. The Act makes a dichotomy between ownership and holding. The land owner cannot hold beyond the permissible area but he could still be the owner of the property beyond the permissible area to the extent to which it falls within the tenants permissible area. In other words, land owner may be holder within the permissible 30 standard acres and he could also be owner of the tenants permissible area without holding the same. This distinction was brought through a Division Bench of this Hon'ble Court in **Jagraj Singh and Others versus State of Punjab and Others**, (1). The contention which was accepted by the Division Bench reads as follows :

"4. The learned counsel for the petitioners has argued that the petitioners have a right under the Act to reserve and retain land

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in their occupation as tenants' permissible area and the instructions annexure P-1 issued by the State of Punjab are illegal and destructive of the express provisions of the Act as also its object and scheme. It has also been argued that the Government has no right to issue executive instructions like annexure P-1 to the authorities under the Act relating to matters which are to be disposed of by them in quasi-judicial capacity."

The Division Bench leading sub-section (1) of section 4 and section 7 held as under :

"A plain reading of sub-sections (1) of sections 4 and 7 leads to a clear conclusion that the Act does envisage the concept of tenants' permissible area and a person who does not otherwise own land, has a right to reserve and retain land in his occupation as a tenant as tenants' permissible area subject to the extent detailed in sub-section (2) of section 4. Under sub-section (1) of section 5 only such tenants of the land are to be recognized for the purpose of the Act who occupied it as such on the appointed day, which under sub-section (1) of section 3 is 21st of January, 1971. In view of these clear provisions in the Act, the argument of the learned counsel for the State that the petitioners cannot assert their claim qua any land of respondents Nos. 3 to 5 as tenants' permissible area under the Act cannot be sustained."

(5) I have no doubt in my mind that surely there was nothing unlawful and illegal about land owner owning a property beyond the permissible area so long as it was only held in hands of the tenants within the tenants' permissible area. The Punjab Land Reforms Act itself does not make this distinction but a Full Bench of this Court held that the tenants' permissible area was inherent in the scheme of the Punjab Land Reforms Act. Where the land owner was the owner of the property in excess of permissible area but not holding the same but was merely an owner of the property leaving it in the hands of the tenants (within his permissible area), it did not fetter the landowner's right to transfer such property which he

owned and which was not held by him. The issue was dealt with by the Full Bench of this Court in **Chander Bhan versus Financial Commissioner, Haryana, (2)**. The relevant part is as under :-

“It is not that all the transfers by big landowners are illegal or barred by the provision. A plain reading of sub-sections (b) and (c) of Section 10-A would indicate that the law merely provides that such transfers would be ignored if they come in the way of the utilization of the surplus land for the re-settlement of tenants or for the purpose of the declaration of surplus area in the hands of a big landowner. There is neither a legal bar to the transfer of a surplus area by a big landowner nor could such a transaction be deemed as void *ab initio* or *not est*.”

(6) This distinction was missed by the Financial Commissioner. He has held that a property which was held by a tenant cannot be allowed to go back in the ownership of landowner. The issue was not that the property could go back to the ownership of the landowner. Fortunately for the owner, when the property was sought for ejection for non-payment of the rent, the tenant had not already exercised his rights of purchase under Section 18 and he did not become the owner. The change of law enabled him to increase the holding not for himself but for his four sons, who had become majors, each of whom was to be treated as one unit. In this case, the property had not been lost possession to the state. The property still continued with the original landowner and subsequently fell to his sons under gift deeds. Consequently, they did not hold the property in excess under the Punjab Land Reforms Act. In this case, the subsequent events have been that Fakir Chand has also expired and even if the transfers were invalid, the property coming to the sons on inheritance were left in their respective hands property within the respective permissible areas. The impugned orders rejecting the application for ejection are set aside and the writ petitions are allowed.

M. Jain