

Before Alok Singh, J.

TEJINDER PAL KAUR,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 14318 of 2009

7th July, 2011

Constitution of India - Art. 226/227 - Punjab Security of Land Tenures Act, 1953 - S. 18 - Application under section 18 moved before Assistant Collector, Ist Grade - Thereafter appeal filed before Collector - Collector remanded matter to Assistant Collector to decide afresh - Order of Collector challenged before Commissioner and thereafter before Financial Commissioner - After recording statement of State Counsel, Financial Commissioner directed that instead of sending the matter to Assistant Collector, it should have been decided by Collector himself - Hence writ petition.

Held, That order of Collector remanding matter to Assistant Collector Ist Grade is justified and legal. Financial Commissioner committed judicial as well as legal error while remanding matter to Collector - Order of Financial Commissioner set aside. Matter remanded to Assistant Collector, Ist Grade.

(Paras 4 to 6)

Ashok Aneja, Advocate, *for the petitioner.*

Jaswinder Singh, DAG, Punjab.

Navneet Singh, Advocate, *for respondent No.2*

ALOK SINGH, J. (ORAL)

The short controversy involved in the present petition is as to whether an application under Section 18 of the Punjab Security of Land Tenures Act, 1953 (in short 'the Act') as applicable in State of Punjab shall be heard by the Assistant Collector of 1st Grade or shall be heard by the Collector?

Record reveals that initially application under Section 18 was moved before the Assistant Collector 1st Grade, Fazilka and thereafter an appeal was filed before the Collector. Learned Collector has remanded the matter to the Assistant Collector to decide it afresh after hearing both the parties. Order of the Collector was challenged before the Commissioner Ferozpur and thereafter before the Financial Commissioner. Learned Financial Commissioner has recorded statement of learned State counsel and has directed that instead of sending the matter to Assistant Collector, it should have been decided by Collector himself because Collector himself is having jurisdiction to decide the application under Section 18 of the Act.

Learned counsel for the petitioner has vehemently argued that as per Section 18 of the Act only Assistant Collector has jurisdiction to decide the application under Section 18 of the Act. He has further stated that initially application was moved before the Assistant Collector as per Section 18 of the Act, however, learned Financial Commissioner has remanded the matter to the Collector on the wrong statement furnished by learned State counsel.

Section 18 of the Act reads as under :-

18. Rights of certain tenants to purchase land -

- (1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a land-owner other than a small land-owner –
 - (i) who has been in continuous occupation of the land comprised in his tenancy for 1 (a minimum period of six years), or
 - (ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous occupation of the land comprised in his tenancy immediately before ejection and immediately after restoration of his tenancy together 2 (amounts to six years or more), or
 - (iii) who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of this Act, and who was in continuous occupation of the land, comprised in his tenancy for a period, 3 [of six years or more immediately before his ejection],

shall be entitled to purchase from the land owner the land so held by him but not included in the reserved area of the land-owner in the case of tenant falling within clause (i) or clause (ii) at any time, and in the case of tenant falling within clause (iii) within a period of one year from the date of commencement of this Act:

Provided that no tenant referred to in this sub-section shall be entitled to exercise any such right in respect of the land or any portion thereof if he had sublet the land or the portion, as the case may be, to any other person during any period of his continuous occupation unless during that period the tenant was suffering from a legal disability or physical infirmity, or if a woman, was a widow or was unmarried :

Provided further that if the land intended to be purchased is held by another tenant who is entitled to pre-empt the sale under the next preceding section, and who is not accepted by the purchasing tenant, the tenant in actual occupation shall have the right to preempt the sale.

(2) A tenant desirous of purchasing land under sub-section (1) shall make an application in writing to an Assistant Collector of First Grade having jurisdiction over the land concerned. 1[x x x] and the Assistant Collector, after giving notice to the land-owner and to all other persons interested in the land and after making such inquiry as he thinks fit, shall 2[determine] the value of the land which shall be the average of the prices obtaining for similar land in the locality during 10 years immediately proceeding the date on which the application is made.

³(3) The purchase price shall be three-fourths of the value of land as so determined.

(4) (a) The tenant shall be competent to pay the purchase price either in a lump sum or in six-monthly instalments not exceeding ten in the manner prescribed.

(b) On the purchase price or the first instalment thereof, as the case may be, being deposited, the tenant shall be deemed to have become the owner of the land, and the

Assistant Collector shall, where the tenant is not already in possession and subject to the provisions of the Punjab Tenancy Act (XVI of 1887) put him in possession thereof.

(c) If a default is committed in the payment of any of the instalments, the entire outstanding balance shall, on application by the person entitled to receive it, be recoverable as arrears of land revenue.]

- (5) If the land is subject to a mortgage at the time of the purchase, the land shall pass to the tenant unencumbered by the mortgage, but the mortgage debt shall be a charge on the purchase money.
- (6) If there is no such charge as aforesaid the Assistant Collector shall subject to any directions which (he may receive from any court pay the purchase money to the land owner.
- (7) If there is such a charge, the Assistant Collector shall, subject as aforesaid, apply in the discharge of the mortgage debts so much of the purchase money as is required for that purpose and pay the balance if any to the landowner or retain the purchase money pending the decision of a civil court as to the person or persons entitled thereto.

I have carefully perused Section 18 of the Act. As per Section 18 of the Act, the application shall be moved in writing to Assistant Collector, 1st Grade. Therefore, Assistant Collector has jurisdiction to entertain and decide the application under Section 18 of the Act. In the opinion of this Court, order of the Collector remanding the matter to the Assistant Collector, 1st Grade to decide it afresh seems to be justified and legal. Learned Financial Commissioner has committed judicial as well as legal error while remanding the matter to the Collector. Petition is allowed. Order of the Financial Commissioner is set aside and the matter is remanded to the Assistant Collector, 1st Grade, Fazilka. Parties are directed to appear before the Assistant Collector, 1st Grade, Fazilka on 27.7.2011 for further action.

V. Suri