M. Jain

Before K. Kannan, J.

CHAND SINGH (DECEASED) THROUGH HIS LRs AND OTHERS—*Petitioners*

versus

THE STATE OF PUNJAB, THROUGH THE SECRETARY, REVENUE DEPARTMENT, CIVIL SECRETARIAT, CHANDIGARH, AND OTHERS—*Respondents*

CWP No. 1197 of 1988

February 1, 2012

A. Punjab Security of Land Tenures Act, 1953 - Ss. 5(1), 5B - Reservation of property, without reference to the property being in possession of the tenants at the time of making reservation - Reservation not made by landlord till after the amendment was introduced in section 5-B - Status of property in the year 1953 cannot be transported and applied in the same way while considering selection under section 5-B -Landlord making selection after 11.12.1957 must exercise his option in such a way that the status of holding as on the date when he makes a selection must be seen - Landlord was not entitled to make reservation of his holding under section 5-B if by that time the property had been leased out to tenants.

Held, that though the above contentions seem attractive, I would reject such a plea and hold that the status of possession of property in the year 1953 cannot be transported and applied in the same way while considering selection under Section 5-B. The landlord, who makes a selection after coming into force of the Amending Act of 1957 by Act 46 of 1957 effective from 11th December, 1957 must exercise his option in such a way that the status of holding as on the date when he makes a selection must be seen. Consequently, if the landlord had been in possession of the property in the year 1953, the manner of reservation which he could have made cannot avail to him, if at the time of the Amending Act, he had lost possession to a tenant and the landlord himself had other extent of properties in his possession in self-cultivation. I would, therefore, hold that the landlord was not entitled to make reservation of his holding in Sakkanwali under Section 5-B if by that time the property had been leased out to tenants. In this case, the subsequent events have been that the tenants have applied for purchase rights under Section 18 and it also appear to have paid the installments.

(Para 6)

B. Constitution of India, 1950 - Article 226 - Limitation Act, 1963 - Law of limitation does not take away a right but only bars the remedy - There is no plea of limitation for a defendant or to a plea in defence when a void order is put against a party - There exists no period of limitation for a person to ignore a void order, so long as a writ is not being filed to declare about the alleged invalidity of the order.

Held, that there is no plea of limitation for a defendant or to a plea in defence when a void order put against a party. The law of limitation does not take away a right but only bars the remedy. This principle is significant in a situation where a person's right is sought to be defeated by citing an order alleged to have been passed against his interest. A person defending his right against such a contention is at all times entitled to point out that he had not been himself a party and that he is entitled to ignore the same.

(Para 9)

Further held, that there exists no period of limitation for a person to ignore a void order, so long as a writ is not being filed to declare about the alleged invalidity of the order.

(Para 9)

Satya Pal Jain, Senior Advocate, with Sandeep Khunger, Advocate, and Dheeraj Jain, Advocate, *for the petitioners.*

S.S. Sahu, Assistant Advocate General, Punjab.

Ashok Singla, Advocate, for respondents 5 to 7.

K.KANNAN, J.

(1) The tenants, who had been ordered to be evicted under the provisions of Punjab Security of Land Tenures Act of 1953 (for short, 'the 1953 Act') from lands measuring 35 standard acres and 2¼ units in various khasra numbers in Village Jandwala Hanwanta, Tehsil Fazilka, District Ferozepur, are the writ petitioners before this Court. They assail the order passed by the Financial Commissioner on 10.11.1987 (Annexure P-5) rejecting the order of the Commissioner and restoring the order of the Collector, directing eviction. The eviction proceedings were in relation to the properties held by the big landowner Buta Singh and after his death, the proceedings were being prosecuted by his sons, Waryam Singh and Avtar Singh. He held properties in Sakkanwali as well as in Jandwala Hanwanta. The contest revolved around the entitlement of the landowner to make his reservation of his permissible area and to seek for ejectment within the permissible area. The landlord's contention was that the property in Sakkanwali had been held in possession by his sons Waryam Singh and Avtar Singh and, therefore, the landlord was entitled to make his reservation in respect of the property in Jandwala Hanwanta. The tenants' contention was that the so-called tenancy created in favour of the landlord's sons was a make-believe affair and the property held by them must be treated as being in the personal cultivation of the landlord. All the authorities consecutively held that the lease in favour of the sons was itself not valid. However, the Financial Commissioner held that the tenants had come into possession of the property only in the year 1957 and on the date of the coming into force of the Act in the year 1953, Buta Singh himself was in possession of the property in Jandwala Hanwanta. The Financial Commissioner held that the Commissioner was in error in allowing for the tenants to make the reservation first in respect of the permissible area, when it should have been otherwise, namely of allowing for the landlord to make his reservation first and if in the year 1953 when the Act came into force, the property in Jandwala Hanwanta had been in possession of the landlord himself, he was entitled

to make his reservation in respect of the said property. The Financial Commissioner also held that the tenants were unable to cite any provision or authority which would restrict the landlord from selecting the land in tenancy within the landlord's permissible area.

(2) On a point of fact, it is brought through records that at the relevant time in the year 1953, the revenue entries clearly showed that the landlord himself had been in possession of the property in Jandwala Hanwanta. The properties in Sakkanwali was also in possession of the landlord, although it was contended by him that they had been granted in lease to his sons.

(3) The learned senior counsel appearing on behalf of the tenants would contend that the Financial Commissioner was in error in holding that the landlord could make any reservation of the property in the manner he pleased. The learned counsel would refer to the provisions of Section 5-B of the Act which allowed for the landlord to make the reservation within a period of six months within the time when the Amending Act came and if such a reservation had not been made, the authorities were entitled to make such a reservation and treat the property even in excess of the permissible area as available for the tenants' permissible area. The counsel appearing on behalf of the respective parties made rival contentions, one disputing the other's assertions. The tenants would contend that the landlord had originally made a reservation of the property in Sakkanwali, while the landlord would contend that he had made reservation of the property only in Jandwala Hanwanta. Whatever was the truth, the question that has to be raised is, whether the landlord could validly make his reservation of the property, without reference to the property being in possession of the tenants at the time when he was making the reservation.

(4) The learned counsel appearing on behalf of the petitioners would contend that there is no difference between the language used in Section 5 of the Act making provision for a right of "reservation" of the landlord and the expression "selection" used in Section 5-B. This point requires to be referred to in view of the contentions raised by the counsel for the respondent/landlord that the reservation which Section 5 contemplates is required to be made in the particular order mentioned in the Section, while the selection made under Section 5-B in Form-E does not contain any such

compulsion for a landlord to proceed along the order of preference. Although the distinction between 'reservation' and 'selection' as dissimilar expressions had been expressed in the judgment of the Hon'ble Supreme Court in ***Lajpat Rai and others*** versus ***The State of Punjab and others (1),*** which was a two-member Bench, the said judgment does not appear to have considered an earlier ruling of the Supreme Court on the very same point by threemember Bench of the Hon'ble Supreme Court in ***State of Punjab (now Haryana) and others*** versus ***Amar Singh and another (2).*** It referred to a still earlier judgment of the Hon'ble Supreme Court which was also a three-member Bench in ***Gurbux Singh*** versus ***State of Punjab and another (3),*** to hold that the expressions "reservation" and "selection" involved the same process and to that extent they were convertible. The Hon'ble Supreme Court held that one can reserve land by selection and another can select land by reservation. If the expressions are synonymous, then the reservation could have also mean only in the order referred to under Section 5(1). The reservation which Section 5(1) sets out the order in which such reservation was possible. Section 5(1) contemplates the reservation to be made on the date of the coming into force of the Act. Admittedly, the reservation had not been made by the landlord till after the amendment was introduced through Section 5-B. At the time when the reservation was made, the tenants were admittedly in possession of the property. The order of priority given under Section 5(1) is as follows:-

> "(a) area held in a Co-operative Garden Colony,
>
> (b) area under self-cultivation at the commencement of this Act other than the reserved area,
>
> (c) reserved area including the area under a *jhundimar* tenant or a tenant who has been in continuous occupation for 20 years or more immediately before such reservation,
>
> (d) area or share in a Co-operative Farming Society,
>
> (e) any other area owned by him,
>
> (f) area under a *jhumdimar* tenant."

(1) (1981) 3 SCC 94
(2) AIR 1974 SC 994
(3) AIR 1967 SC 502

(5) If this order of preference were to be read as incorporated under Section 5-B, then the selection which the landlord could have made could be only in respect of the land which was held by him under his personal cultivation. The learned counsel appearing on behalf of the respondent/ landlord would further submit that even the selection which Section 5-B contemplates must be taken as an entitlement to make a selection when he had failed to make reservation under Section 5(1) at the time when the Act was passed. According to him, the selection under Section 5-B was a fresh right for a person, who had not exercised his right of reservation under the Act and, therefore, what he could not do under Section 5, he had yet another opportunity under Section 5-B and the status of his possession in respect of his lands on the date of the Act in the year 1953 alone was relevant. If in the year 1953 he had held the property in Jandwala Hanwanta in his personal cultivation and he had also the properties in Sakkanwali through his sons, he was entitled to make reservation in respect of the lands in either one of the villages and therefore, he was entitled to selected the lands in Jandwala Hanwanta as falling within his permissible area.

(6) Though the above contentions seem attractive, I would reject such a plea and hold that the status of possession of property in the year 1953 cannot be transported and applied in the same way while considering selection under Section 5-B. The landlord, who makes a selection after coming into force of the Amending Act of 1957 by Act 46 of 1957 effective from 11th December, 1957 must exercise his option in such a way that the status of holding as on the date when he makes a selection must be seen. Consequently, if the landlord had been in possession of the property in the year 1953, the manner of reservation which he could have made cannot avail to him, if at the time of the Amending Act, he had lost possession to a tenant and the landlord himself had other extent of properties in his possession in self-cultivation. I would, therefore, hold that the landlord was not entitled to make reservation of his holding in Sakkanwali under Section 5-B if by that time the property had been leased out to tenants. In this case, the subsequent events have been that the tenants have applied for purchase rights under Section 18 and it also appear to have paid the installments.

(7) The landowner has a second string of bow, as it were, that the proceedings were not completed by the time when the Punjab Land Reforms

Act of 1972 had been enacted and at the time when the 1972 Act was introduced, two of the sons of Buta Singh were themselves majors and they were entitled to separate holding. The entire extent of property itself did not come within the surplus area and as a matter of fact Special Collector (Agrarian), Muktsar, had passed an order on 21.08.1995 specifically holding that after the commencement of the 1972 Act, there was no surplus area in the hands of Buta Singh and his sons. The learned counsel for the respondents would contend that the said proceedings had become final and, therefore, the tenants cannot claim the properties held by them as falling within the permissible area and claim proprietary rights. The learned senior counsel appearing on behalf of the tenants however would contend that such a decision alleged to have been taken by the Special Collector (Agrarian) on 21.08.1995 was *void ab initio* and in any event would not bind the tenants since admittedly the proceedings have been taken behind their back without serving any notice on them. Their contention is that a lease involves a transfer of interest and when surplus area proceedings were taken by the Special Collector (Agrarian), he could not have concluded the proceedings without serving notice on the tenants and inviting their objections before concluding the proceedings.

(8) The counsel appearing on behalf of the landlord would contend that an order which was passed, even if it is void, would require to be set aside and cites in support of such a contention the decision of the Hon'ble Supreme Court in ***State of Punjab and others*** versus ***Gurdev Singh, Ashok Kumar (4).*** The Hon'ble Supreme Court was dealing with the case of a person complaining of dismissal from service as invalid where the Court held that by virtue of Article 113 of the Limitation Act, a suit for declaration or invalidity of dismissal was to be brought within 3 years and a person cannot merely ignore even an invalid order. The counsel also refers to a decision of a Division Bench of this Court in ***Ajit Singh*** versus ***State of Haryana and others (5),*** that held that when a Collector after examination of the evidence adduced by parties recorded a finding that a tenant was liable to be evicted and a person, who was aggrieved by that order had preferred an appeal

(4) AIR 1991 SC 2219
(5) 2002(3) RCR (Civil) 299

and revision which were also dismissed, a writ petition filed after delay of more than 10 years cannot avail without taking notice of order of eviction by merely saying that the orders were invalid or void. In that context, the Division Bench held that even a void order had to be challenged. A still later judgment of the Hon'ble Supreme Court in ***Sneh Gupta*** versus ***Devi Sarup and others (6),*** was also cited by the learned counsel appearing on behalf of the landlord that a compromise decree passed by a Court without consent of all parties whether void or voidable was still required to be set aside by filing a suit within the period of limitation. The court said that it was not the law that where a decree was void, no period of limitation shall be attracted.

(9) There is a fundamental flaw in the contentions of the learned counsel appearing on behalf of the respondents in assuming that a void order would always require to be set aside. This is so in cases where a person, who is affected by the order seeks to challenge the said order, unmindful of the law of limitation. In ***Gurdev Singh's case (supra),*** an employee, who was dismissed from service, was challenging the dismissal more than 3 years later by contending that there was no law of limitation. In ***Ajit Singh's case (supra),*** it was again a situation of a person, who had been ordered to be evicted, was challenging the same after 10 years treating the order to be void. In ***Sneh Gupta's case (supra),*** the Hon'ble Supreme Court was considering a plaintiff, who was seeking for a plea that a decree was invalid, had filed a suit more than 3 years after the decree was passed. In all cases where a person was interested in avoiding an order and seeking for a declaration that it was invalid and not operative, the law of limitation applied to him to bar him from contending that an order which was void or illegal could be challenged at any time. It would be wholly different in a case where the plaintiff does not know of an order or was not made a party to an order and the defendant or a respondent, was interested in nonsuiting the plaintiff by contending that by a supervening event of a subsequent order, the plaintiff had lost his right. In such a case the plaintiff is really in the position of a defendant to a respondent's counter claim making an attempt to non-suiting the plaintiff. There is no plea of limitation for a defendant or to a plea in defence when a void order put against a party.

(6) 2009(2) RCR (Civil) 129

The law of limitation does not take away a right but only bars the remedy. This principle is significant in a situation where a person's right is sought to be defeated by citing an order alleged to have been passed against his interest. A person defending his right against such a contention is at all times entitled to point out that he had not been himself a party and that he is entitled to ignore the same. In this case when the tenant was contending that the tenants' right had been subsequently enlarged to proprietary rights and the landlord was attempting to defeat such a claim by contending that by a subsequent order passed by a Collector during the pendency of the proceedings in this Court that his holdings fell within the permissible area of the landlord's, the tenant has only to show that the order set up in defence by a respondent in a writ petition had been passed behind his back and he was entitled to ignore the same. There exists no period of limitation for a person to ignore a void order, so long as a writ is not being filed to declare about the alleged invalidity of the order.

(10) I would, therefore, hold that if on the date when the writ petition had been filed, the proceedings of the Special Collector (Agrarian) declaring that there were no surplus area in the hands of Buta Singh and his sons had not been passed, the petitioners are entitled to succeed and the order passed by the Financial Commissioner holding that the landlord was entitled to make reservation of the area in the hands of the tenants was clearly wrong and against the statutory scheme of the reservation prescribed under the 1953 Act. However, it will be improper to completely ignore the subsequent proceedings which had taken place in 1995. The defendants are entitled to apply to the authority for a fresh adjudication, who after serving a notice on the tenants, may take a decision in their presence. This writ petition only concludes the rights of parties as on the date of the filing of the writ petition and on the invalidity of the order passed by the Financial Commissioner allowing for the landlord to make reservation of the permissible area from the lands in Jandwala Hanwanta.

(11) The writ petition is allowed on the above observations.

V. Suri