

(7) In regard to the penalty under section 18-A(9) (a) of Act 11 of 1922, on the assessee in this case, if she had been required to furnish the estimate of her income according to sub-section (2) of section 18-A of that Act, then only obviously the provisions of subsection (9) would be attracted. It is expressly stated in sub-section (2) of that section that the assessee who is required to pay tax by an order under sub-section (1), of that section is to give the estimate of his income, and obviously 'required' means "required by a due notice'. The answer to the first question being in the negative and no notice under sub-section (1) of section 18-A of that Act having been given to the assessee, she was not required to pay tax on an estimate as referred to in sub-section (2) of that section and hence the penalty provision of sub-section (9) of the section was not attracted. The answer to the second question is also in the negative.

(8) The two questions in the reference having been answered in the negative, the Commissioner of Income-Tax will bear costs of the assessee, counsel's fee being Rs. 250.

R. S. NARULA, J.—I agree.

N. K. S.

CIVIL MISCELLANEOUS

Before Prem Chand Jain, J.

RANDHIR SINGH AND OTHERS,—*Petitioners.*

Versus.

FINANCIAL COMMISSIONER, HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 2612 of 1968

March 27, 1970.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955 as amended by IX of 1956)—Sections 7 and 8—Tenant inducted on land after the commencement of Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956—Whether can be ejected straightaway after expiry of three years—Proof of conditions under section 7—Whether necessary.

Held, that a tenant inducted on land after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956,

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can be ejected straightaway after the expiry of three years without providing any of the conditions mentioned in section 7 of the Act. From the plain reading of sections 7 and 8, there is no escape from the conclusion that section 8 gives an independent right to a landowner to file an application for ejectment in case the condition specified therein is satisfied. The words "subject to the provisions of section 7" in this section cannot be read to mean that even after the expiry of three years, before an ejectment application can be filed, one of the conditions specified under section 7 of the Act, shall have to be satisfied. These words have to be read to mean, that a tenant who is inducted after the Amendment Act, shall be allowed to continue for a minimum period of three years, but in case he commits any of the defaults provided under section 7 of the Act, then the ejectment can take place even before the expiry of three years. The purpose of section 8 in prescribing the minimum period of three years seems to be to give them an incentive to cultivate and till the land leased out to them properly. (Para 4)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, or any other suitable writ, order or direction be issued quashing the orders of Respondents 1 to 2 with the direction that the petitioner's suit for ejectment of Respondent No. 4 be decided and decreed in accordance with law.

H. S. WASU, SENIOR ADVOCATE WITH B. S. WASU AND B. S. MALIK, ADVOCATES, for the petitioner.

TIRATH SINGH, ADVOCATE, for Respondent No. 4.

JUDGMENT

P. C. JAIN, J.—This order of mine will dispose of Civil Writs Nos. 2612, 2681, 2682, 2683, and 2684 of 1968, as common questions of law and fact are involved in them. The petitioners are common in all these petitions but respondent No. 4 is different in all the petitions, he being the tenant.

(2) The petitioners are landowners in village Anta, Tehsil and District Jind, while respondent No. 4 is their tenant. It is alleged in the petitions that before Kharif 1963, the land in question was under the self-cultivation of the petitioners and the tenancy of respondent No. 4 started from Kharif 1963. On the completion of three years, the petitioners filed suits under section 8 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Act) for the eviction of respondent No. 4; but the same

were dismissed by the Assistant Collector 1st Grade,—*vide* his order dated 25th July, 1967 (copy Annexure 'B' to the petition). Feeling aggrieved from the judgments and orders of respondent No. 3, appeals were preferred by the petitioners but the same were dismissed by the Collector, respondent No. 2, on 26th October, 1967 (copy Annexure 'C' to the petition). Their revisions to the Financial Commissioner were also rejected on 29th June, 1968 (copy Annexure 'D' to the petition). By way of these petitions, the legality of the orders of the revenue authorities has been challenged by the petitioners.

(3) There is no representation on behalf of respondents 1 to 3 nor has any written statement been filed on their behalf. Respondent No. 4 has filed his written statement in which it is asserted that the impugned orders of the revenue authorities are perfectly legal.

(4) It was vehemently contended by the learned counsel for the petitioners that the orders of the revenue authorities suffered from an error of law as they proceeded on the wrong premises that section 8 of the Act did not entitle a landlord to eject a tenant without proving any of the conditions of section 7. According to the learned counsel, respondent No. 4 having admittedly been inducted as a tenant on the land in dispute after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 (hereinafter referred to as the Amendment Act) could be ejected straightaway after the expiry of three years without proving any of the conditions mentioned in section 7 of the Act. The two sections on the interpretation of which the fate of this case hinges, are in the following terms:—

“7. *Termination of tenancy,—*

(1) No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds, namely:—

(a) * * * *

(b) that the tenant has failed to pay rent within a period of six months after it falls due:

Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejection and he had failed to pay such arrears during that period.

- (c) that the tenant, not being a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity has after commencement of the President's Act sublet without the consent in writing of the landowner, the land comprising his tenancy or any part thereof;
- (d) that the tenant has, without sufficient cause, failed to cultivate personally such land in the manner and the extent customary in the locality in which such land is situated;
- (e) that the tenant has used such land or any part thereof in a manner which is likely to render the land unfit for the purpose for which it was leased to him;
- (f) that the tenant, on demand in writing by the landowner, has refused to execute a Kabuliyat agreeing to pay rent in respect of his tenancy in accordance with the provisions of section 9 and 10."

8. *Security of tenure to certain tenants.*

Subject to the provisions of section 7, every tenant admitted after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, shall hold land for a minimum term of three years.

Provided that nothing herein shall apply to the tenant of a person who is a widow, a minor, an unmarried woman, a member of the Armed forces of the Union, or a person incapable of cultivating land by reason of physical or mental infirmity."

It may be observed that this is a case of first impression and there is no decided case on the point which requires decision. After giving my

thoughtful consideration to the entire matter, I am of the view that there is considerable force in the contention of the learned counsel for the petitioners. Section 7 of the Act prescribes the grounds under which the tenancy of a tenant can be terminated while section 7A provides additional grounds for terminating the tenancy in certain cases referred to in the section. I have made reference to section 7A only with a view to keep the sequence otherwise for the purpose of deciding this case nothing hinges on that section. Section 8 prescribes that subject to the provisions of section 7, a tenant inducted after the commencement of Amendment Act shall hold land for a minimum period of three years. From the plain reading of section 7 and 8, I find no escape from the conclusion that section 8 gives an independent right to a landowner to file an application for ejection in case the condition specified therein is satisfied. The words "subject to the provisions of section 7" cannot be read to mean that even after the expiry of three years, before an ejection application can be filed, one of the conditions specified under section 7 shall have to be satisfied. In my view, these words have to be read to mean, as was contended by the learned counsel for the petitioners, that a tenant who is inducted after the Amendment Act, shall be allowed to continue for a minimum period of three years, but in case he commits any of the defaults provided under section 7 of the Act, then the ejection can take place even before the expiry of three years. The opening words of sub-section (1) of section 7, "No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds" also make it clear that the ground given in section 8 is independent of section 7. These words clearly indicate that a tenancy can be terminated in accordance with the other provisions of the Act also. In case the Legislature had intended section 8 to be dependent on the provisions of section 7 then the opening words of sub-section (1) would have been "No tenancy shall be terminated except on any of the following grounds". If section 8 is interpreted in the manner as it has been done by the revenue authorities then the effect would be that a tenant would not be liable to ejection before the expiry of three years even if he commits any default as mentioned in section 7. This could never be the intention of the Legislature. The purpose of section 8 in prescribing the minimum period of three years seems to be to give sufficient security to tenants in order to give them an incentive to cultivate and till the land leased out to them properly. I am visualising a case of a landowner who out of his reserved area, gives some land for cultivation to a tenant after the enforcement of

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the Amendment Act. There may be so many reasons for doing so, for example, a landowner may have to go out of his village for a pretty long time and in order to avoid his land lying fallow, he may give it on lease to someone. If section 8 had not been there, then a landowner would think twice before giving the land out of his reserved area to a tenant for cultivation because in that case it would not be possible for him to eject the tenant till he commits a default as provided under section 7 of the Act. By providing section 8, a landowner can safely lease out land even out of his reserved area for a short period while a tenant is also given security that the period would not be less than three years. In this view of the matter. I hold that section 8 provides an independent ground of eviction and a tenant inducted after the enforcement of the Amendment Act can be ejected after the expiry of three years without proving any of the conditions specified in section 7 of the Act.

(5) No other point was urged.

(6) For the reasons recorded above, I allow these petitions, quash the impugned orders and send back the cases to the Assistant Collector, First Grade, for decision in accordance with law. The parties, through their learned counsel have been directed to appear before the Assistant Collector, First Grade, Jind, on 20th April, 1970. In the circumstances of the case, I leave the parties to bear their own costs.

K. S. K.

FULL BENCH

*Before Harbans Singh, C.J. and Gurdev Singh, R. S. Narula,
Bal Raj Tuli and Prem Chand Jain, JJ.*

HARNEK SINGH AND ANOTHER,—Petitioners.

Versus.

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Letters Patent Appeal No. 124 of 1967

August 25, 1971.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 32-FF—Transfer of land by a land-owner after August 21, 1956—Determination of surplus land of such land-owner—Transferee of the land—Whether an interested person—Notice to him before declaring surplus area of the transferor—Whether essential.