

Panchayat Act, reproduced above, it is clearly mentioned that the Panchayat can pass such order, sentence or decree as may be in accordance with justice, equity and good conscience. The restoration of possession of a site, from which a person has been forcibly dispossessed, is essentially an order in accordance with the principles of justice, equity and good conscience because the object of such a direction is to prevent any person gaining wrongful possession of a site by his unlawfull and forcible acts. It is an essential principle of all laws that a person in peaceful possession of a site should be protected against forcible dispossession and justice requires that a person, who flouts the law and relies on physical force and dispossesses a person in peaceful possession, should be made to restore back that possession. Section 522 of the Code of Criminal Procedure embodies this principle of justice equity and good conscience, and even though section 522 may not be applicable to the proceedings before the Panchayat, there is nothing to prevent the Panchayat from giving effect to the principle underlying that section. I would, therefore, hold that the Gram Panchayat was well within its competence to order restoration of the possession of the site in question to Sarwan Singh.

Sheru
v.
Sarwan Singh
and others

Khanna, J.

I am also of the view that as substantial justice has been done in this case, this Court should in the exercise of its discretion refuse to interfere with the order of the Gram Panchayat, The petition, accordingly, fails and is dismissed.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J

HARDEVA,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1731 of 1962.

Punjab Security of Land Tenures Act (X of 1953)—Ss. 5-B and 18—Area selected by lanlord—Whether can be purchased by tenant.

1965

March, 11th.

Held, that a tenant is not entitled to purchase the land of a big land-owner which is included in his reserved area and the area "selected" under section 5-B of the Punjab Security of Land Tenures Act, 1953, is given the same status as a reserved area.

Petition under Articles 226/227 of the Constitution of India, praying that a writ in the nature of Certiorari, or any other appropriate writ, order or direction issued quashing the order passed by the respondents and further praying that the operation of the impugned orders of the respondents and petitioners dispossession from the land in question be stayed till the final disposal of the writ petition.

HARNAM SINGH WASU AND BALBIR SINGH WASU, ADVOCATES, for the Petitioner.

D. D. KHANNA, ADVOCATE, for the Respondent.

ORDER

Shamsher
Bahadur, J.

SHAMSHER BAHADUR, J.—This judgment will dispose of two writ petitions, Civil Writ Nos. 1731 and 1732 of 1962. Such slight differences as exist between the facts of these two petitions relate only to question of fact which are briefly indicated below; the substantial question of law to be decided in both these petitions is identical.

Hardeva, petitioner is admittedly a big landlord of village Panniwala Mota in Sirsa Tehsil of Hissar District. Two of his tenants made applications on 9th September, 1957, for purchase of the holdings in their occupation under section 18 of the Punjab Security of Land Tenures Act (hereinafter referred to as the Act). Surja (respondent No. 4 in C.W. 1731 of 1962), sought permission to purchase land measuring 28 *bighas* 12 *biswas* in *khasra* No. 326-M in village Panniwala Mota while Duni Ram, the fourth respondent in C.W. 1732 of 1962, likewise asked for the purchase of the land measuring 14 *bighas* comprised in *khasra* No. 248, also in village Panniwala Mota. These applications were allowed by two separate orders of the Assistant Collector Shri Hoshier Singh passed on 31st of March, 1959. It was held by the Assistant Collector that the land in question in each case had been in continuous possession of the applicant for the last six years and that it had not been reserved by the landlord under the provisions of the Act. It was further found that the tenants did not possess more than the permissible limits. The tenants were, therefore, permitted to purchase the lands at their market value which was fixed in each case at Rs. 192.74 P. per *bigha*. Hardeva presented appeals to the Collector before whom the only point agitated was that the tenants who sought permission to purchase the lands of the big landowner were holding more than the permissible areas. This point

was decided against the landlord and in favour of the tenants in both cases by the Collector in two separate appellate orders which were passed on 20th of July, 1960.

Hardeva
"State of Punjab
and others

Shamsher
Bahadur, J.

In a petition for revision before the Commissioner, Ambala Division, permission was sought and granted to urge the additional ground that the landlord had in fact selected the area which the tenants applied to purchase under section 18 of the Act. It would be recalled that by an amendment introduced in the Act by insertion of section 5-B on 20th of December, 1957, a land-owner who had not till then exercised his right of reservation "may select his permissible area and intimate the selection to the prescribed authority within the period specified in section 5-A in such form and manner as may be prescribed." Under section 5-A, a declaration has to be made about the land in excess of permissible area by a land-owner within six months from the commencement of the Punjab Security of Land Tenures (Amendment) Act, 1957. Prior to the amendment, a land-owner was given similar right of reservation and it seems that section 5-B was inserted for the benefit of those who had not till the 20th of December, 1957, made any reservation. Under the amended section 5-B, the land-owner had included the areas now sought to be purchased in his selection made either on 19th or 20th of June, 1958. It was sought to be argued before the Commissioner that by virtue of a ruling given by the Financial Commissioner and reported in *Karam Singh v. Angrez Singh* (1), no distinction was made between reservation and selection. It was stated in this memorandum that previously selection did not rank on the same footing as reservation and the point consequently had not been pressed by the landlord before the Assistant Collector and Collector. Holding that the landlord had raised this point both before the Assistant Collector and the Collector, though not pressed, and that in fact the selection had been made by the landlord before the statutory period of six months, a recommendation was made to the Financial Commissioner that the tenants should not be allowed to purchase the lands which had been selected by the landowner under section 5-B of the Act.

(1) 1960 L.L.T. 57.

Hardeva
 v.
 State of Punjab
 and others
 —
 Shamsher
 Bahadur, J.

It may be observed that a Bench of Tek hand and Dua, JJ., in *Angrej Singh v. Financial Commissioner, Punjab, and others* (2), has held that:—

“The common feature of ‘reserved area’ under section 5 of the Punjab Security of Land Tenures Act and ‘selected area’ under section 5-B of the Act is that they have to be carved out of the ‘permissible area’ over which the landowners are given plenary proprietary rights. Therefore, a landowner who makes selection of ‘permissible area’ under section 5-B of the Act, is competent to eject a tenant from that area under section 9(1) (i) of the Act.”

As a proposition of law it is not disputed by Mr. Khanna, the learned counsel for the tenants, that there is no distinction between a ‘reserved area’ and a ‘selected area’, the incidents of both being that the landlord would be protected from proceedings by tenants for their purchase.

The learned Financial Commissioner, to whom the recommendation was made in revision by the Commissioner, however, did not accept the same and dismissed the petitions of the landowner on the ground that the point of law which was sought to be argued as an additional ground not having been raised before the Assistant Collector or the Collector could not be permitted to be urged at the revisional stage. The landowner Hardeva has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India to have the orders of the Financial Commissioner confirming those of the Assistant Collector and Collector quashed, the fourth respondent in C.W. 1731/62 being Surja and Dhani Ram in C.W. 1732/62.

In my opinion, the disputed question relates to jurisdiction and goes to the root of the whole matter. If the selection had in fact been made within the statutory period by the landowner the tenants could not pursue their applications for purchase under section 18 in respect of holdings included either in the reserved or selected areas. As laid down in sub-section (1) of section 18:—

“Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a landowner, other than a small landowner—

- (i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years

(2) I.L.R. (1962) 2 Punj. 766=1962 P.L.R. 736.

shall be entitled to purchase from the landowner the land so held by him but not included in the reserved area of the land-owner, in the case of a tenant falling within clause (i) or clause (ii) at any time, , , ”.

Hardeva
"State of Punjab
and others

Shamsher
Bahadur, J.

For the purchase of land held by a tenant of a big landowner, it is a statutory prerequisite that the land should not be included in the reserved area and the "selected" area is given the same status as a reserved area. There is a slight dispute on the question whether the intimation of selection was given on 19th or 20th of June, 1958. I would, however, prefer to accept the finding of the learned Commissioner on this point and give the landowner the benefit of it. The selection having been made on 19th of June, 1958, the tenants are clearly precluded from purchasing the lands so selected. The sole ground on which the learned Financial Commissioner has rejected the recommendation of the learned Commissioner is that the point was not actually raised before the Assistant Collector and the Collector. The finding of the Commissioner that the point had actually been raised has not been accepted by the learned Financial Commissioner and I will not allow that that matter to be re-agitated in writ proceedings. The question remains whether even if the point is not raised specifically it can still be contended for in writ proceedings. It has to be remembered that the point was actually taken before and accepted by the learned Commissioner at the revisional stage. Whether the explanation given by the landowner for the belated submission of this point is tenable or not, there can be no escape from the conclusion that the question agitated is that of jurisdiction and is of fundamental importance inasmuch as the tenants' right to acquire property by purchase does not extend to the area which has been selected. The landowner admittedly had selected the area at the latest on 20th of June, 1958. If the point had been properly presented, the Assistant Collector was bound to reject the application made by the tenants. The prevailing view uptill 1960 appears to have been that the selected area had not been equated with the reserved area and it seems reasonable that this was so, otherwise there was hardly any point in not pressing it before the Assistant Collector and the Collector. The position in law, as it exists and has existed since 1960, is undeniable and under it the landowner must succeed.

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Bahadur, J.

In my view, the learned Financial Commissioner should have accepted the recommendation made by the Commissioner and I would accordingly allow these petitions and hold that the tenants are not entitled to purchase the lands of their landlord selected by him under the provisions of section 5-B of the Punjab Security of Land Tenures Act. In the circumstances, I would make no order as to costs.

B. R. T.

CIVIL MISCELLANEOUS

Before S. S. Dulat and A. N. Grover, J.J.

KRISHAN GOPAL, —*Petitioner*

versus

PANJAB UNIVERSITY AND ANOTHERS,—*Respondents*

Civil Writ No. 1628 of 1964

1965
March, 15th.

Constitution of India (1950)—Arts. 12 and 14—Panjab University—Whether included in the definition of 'State'—Act of University—Whether can be challenged as discriminatory.

Held, that the Panjab University does not fall within the definition of 'State' as given in Article 12 of the Constitution and any challenge under Article 14 to an act of the aforesaid University cannot be sustained.

Case referred by the Hon'ble Mr. Justice A. N. Grover, on 15th January, 1965, to a larger Bench for decision of an important question of law involved in the case and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat, and the Hon'ble Mr. Justice A. N. Grover, on 15th March, 1965.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the result of the P.E.L. Examination of the Panjab University, held in September, 1963, in so far as the petitioner was wrongly declared unsuccessful.

H. S. WASU, B. S. WASU AND VINOD KUMAR SURI, ADVOCATES,
for the Petitioner.

G. P. JAIN AND B. S. GUPTA, ADVOCATES, for the Respondent