

empowers the Collector to cancel a lease granted by him at his own sweet will and pleasure. On the other hand the provisions of sections 8 and 10 appear to militate against the contention that the Collector is at liberty to cancel a lease without the intervention of an independent judicial tribunal.

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After a careful consideration of the arguments which have been addressed to us I entertain no manner of doubt that it was not within the competence of the Collector to determine whether the conditions of the lease had or had not been violated. If he was of the opinion that the petitioner had committed a breach of the terms of the contract it was open to him to pursue such remedies under the ordinary law of the land as he thought fit or proper. He could not be a judge in his own cause and could not direct that the petitioner should be thrown out of the land by use of force. The Collector in the present case has clearly exceeded the powers conferred upon him by law and his order must therefore be set aside. I would accordingly accept the appeal, set aside the order of the learned Single Judge and direct that the petitioner's possession be not disturbed. There will be no order as to costs.

Bishan Narain, J.—I agree.

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CIVIL WRIT

Before Bishan Narain, J.

THE GRAM PANCHAYAT, VILLAGE BARWA, TEHSIL
AND DISTRICT KARNAL,—*Petitioner*

versus

THE COLLECTOR, KARNAL AND OTHERS,—*Respondents*

Civil Writ No. 252 of 1955.

East Punjab Utilization of Lands Act (XXXVIII of 1949)—Sections 3 and 5—Lease under—Cancellation of—

1956

April, 20th

Powers of the Collector -East Punjab Utilization of Lands (Amendment) Act (XI of 1951)—Effect of—Order cancelling lease without hearing or notice to the affected party—Whether valid—Section 14(1) and (2)—Effect of—Proceedings terminated—Whether Collector has inherent jurisdiction to reopen—Constitution of India—Article 226—Object of—High Court when may decline to interfere.

Held, that after 25th May, 1951, when the East Punjab Utilization of Lands (Amendment) Act, No. XI of 1951, came into force, and section 6 of Act No. XXVIII of 1949, was deleted, the Collector has no power to terminate a lease granted by him under section 5 of the Act.

Held, that the Collector could not pass any order against the lessees without hearing them or without notice to them. But his order, however unjust, was final under section 14(1) and it could not be impeached in any Civil Court in view of section 14(2) of the Act.

Held, that the Collector had inherent jurisdiction to reopen the already terminated proceedings and in the interest of justice to decide the matter once again after hearing both the parties.

Held, that the purpose of the power under Article 226 of the Constitution is to advance justice and repress injustice. High Court will not interfere with an order which is eminently just, even though it be defective.

Petition under Articles 226 and 227 of the Constitution of India, praying that the order, dated the 20th May, 1955, be quashed as without jurisdiction and illegal and that of 4th November, 1953, be restored being final under the Act and a writ of certiorari, prohibition or any other appropriate writ or direction be issued to the respondents not to act in pursuance of the order, dated the 20th May, 1955, and the order, dated the 4th November, 1953, be declared final, and further praying that the possession of the petitioner be not disturbed pending the decision of this petition or any other appropriate direction may be issued in the meanwhile.

Y. P. GANDHI, for Petitioner.

S. M. SIKRI, Advocate-General, and N. S. KEER, for Respondents.

ORDER

BISHAN NARAIN, J.—This petition under Article 226 of the Constitution by the Gram Panchayat of village Barwa, Tahsil Karnal, arises in these circumstances. Waste area of 274 acres of land in this village was taken over by the Collector in 1951, under section 3 of the East Punjab Utilization of Lands Act (Act No. XXXVIII of 1949). Different areas of this land were leased out separately to two groups of persons and to individuals under section 5 of the Act on 17th October, 1951, and lease-money was realised by the Collector. Only Ranjha Singh's group (one of the lessees) is contesting this petition and others are no longer interested in the lease taken by them and, therefore, it is necessary to consider only the case of Ranjha Singh's group in this judgment. Possession of land leased to this group was delivered on the 19th March, 1952. On some date, not clear on this record, the owners of the village objected to this lease on the ground that security money had been deposited by them and it had been accepted on the 9th July, 1951, and that the owners had also reclaimed the land since then. Without issuing any notice to the lessees the Collector set aside the lease by his order, dated the 4th November, 1953, and leased the land to the owners and passed other consequential orders. The lessees, i.e., Ranjha Singh's group, thereupon objected to the cancellation of the lease by application, dated the 18th January, 1954. The Collector held a detailed enquiry into the matter. He found the report of the Tahsildar, whom he had appointed for the purpose, to be unsatisfactory and he ordered the Revenue Assistant to enquire into the matter. The Revenue Assistant made a detailed report on the 13th June, 1954, after inspecting the

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spot. He found that this group had not only re-claimed the land but had actually cultivated a portion of it although the owners had destroyed their crop before it ripened. The Collector then issued notice to the parties for the 20th May, 1955, but on that day the owners, though served, remained absent while the lessees' group appeared before him. The Collector then purported to accept the lessees' review petition on the ground *inter alia* that his predecessor had no jurisdiction to cancel the lease once granted and that the owners' representation to his predecessor that they had re-claimed the land was wrong. The learned Collector then proceeded to order that 770 *bighas* out of 829 *bighas* of land still lying *banjar* in the village be restored to this group as it was impossible to restore the land previously reclaimed and cultivated by it. In the meanwhile the entire waste land being *shamilat* land was vested in the Gram Panchayat under the Punjab Village Common Lands (Regulation) Act, No. I of 1954. The *panchayat* was not impleaded by the lessees in their application, dated the 18th January, 1954, nor was any notice sent to it, nor did the *panchayat* intervene in the proceedings that were pending before the learned Collector since the 18th January, 1954. The Gram Panchayat has, however, filed the present petition to this Court.

The learned counsel for the *panchayat* has urged before me that the Collector had no jurisdiction to set aside the order of his predecessor and that the East Punjab Utilization of Lands Act does not empower a Collector to review an order once passed under the Act. The East Punjab Utilization of Lands Act, No. XXXVIII of 1949, came into force in November, 1949. Under this Act the Collector was empowered to take possession of any land not cultivated for two or more harvests after

issuing notice to the owner and then he is empowered to lease it for the purposes of growing food, etc. Under section 6 of the Act, the Collector had the authority to terminate the lease if he was satisfied that the owners had made arrangements for cultivation of the land. This Act, however, was amended by the East Punjab Utilization of Lands (Amendment) Act, No. XI of 1951, which came into force in May, 1951. Under this amending Act section 6 of the 1949 Act was deleted and so were other provisions relating to earlier termination of the lease. Thus after the 25th May, 1951, the Collector had no power to terminate a lease granted by him under section 5 of the Act. Neither the original Act nor the amending Act empowers a Collector to review his own or his predecessor's order. It is nobody's case before me that the Collector has inherent power to review his own order and, therefore, this aspect of the matter need not detain me. The learned counsel for the *panchayat* in these circumstances has strenuously urged before me that the order, dated the 20th May, 1955, must be set aside leaving the respondents to seek their remedy in accordance with law against the order, dated the 4th November 1953, if they consider it fit to do so.

It appears to me, however, that the learned counsel has entirely misunderstood the nature of the proceedings taken by the Collector after he had granted lease to Ranjha Singh's group and after possession had been delivered to the lessees. The owners objected to the granting of this lease. The Collector was then called upon to adjudicate upon the rival claims of the proprietors of the village and the lessees. He decided the matter without notice to the lessees in their absence and without their knowledge and accepting the representation of the proprietors cancelled the lease. Under the Act, as in force

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in November, 1953, the Collector had no authority to cancel the lease and his order was without jurisdiction. Moreover, he could not pass any order against the lessees without hearing them or without notice to them. His order, however, unjust, became final under section 14(1) and it could not be impeached in any civil Court (*vide* section 14(2)). Placed in this precarious position the only course left open to the lessees was to approach the Collector to reconsider the matter and this they did by their application, dated the 18th January, 1954. It is true that they seem to have considered this application to be a review application and also that the Collector purports to deal with it as a review petition. But looking at the substance of the matter it appears to me that it cannot be considered to be a review petition in its technical sense but that in substance it was an application to the Collector to recall his order which he had made without jurisdiction and in contravention of the provisions of the Act and also in violation of the principles of natural justice by omitting to give notice to the lessees or by omitting to give them an opportunity to represent their case before he passed the final order. Obviously in November, 1953, the Collector was acting in a quasi-judicial capacity as he was considering whether a lease already granted was to be cancelled or not on the representation of the proprietors of the village. In these circumstances, in my opinion, the Collector had inherent jurisdiction to reopen the already terminated proceedings and in the interests of justice to decide the matter once again after hearing both sides. This is what the Collector has done in the present case and there is nothing in the Act to prevent the Collector from doing so.

It was submitted on behalf of the *panchayat* that the *shamilat* land vested in the *panchayat*

and the Collector had no jurisdiction to pass the order, dated the 20th May, 1955, without issuing any notice to it and without hearing it. Now the petition does not state when the *panchayat* was constituted or continued under the Gram Panchayat Act, No. IV of 1953. All that it states is that "the mutation of the *shamilat* has been duly entered in the name of the petitioner as owner". This mutation according to the reply filed by the Collector was sanctioned only on the 8th July, 1955, i.e., after the impugned order had been made on the 20th May, 1955. It is conceded before me that in spite of the vesting of the *shamilat* land in the *panchayat* it was open to the Collector to lease the property under the East Punjab Utilization of Lands Act and, therefore, it was open to the Collector to take the land from the *panchayat* and lease it out under the Utilization of Lands Act. In any case if the *panchayat* was, in fact, in existence since 1953, then it is impossible to believe that it did not know of these proceedings when detailed enquiries were held in the village by the Tahsildar and then by the Revenue Assistant. It must also be remembered that the proprietors had been duly served in this matter and it is difficult to believe that they did not inform the *panchayat* of these proceedings. In any case there is no sufficient material on this record to lead one to the conclusion that *shamilat* land vested in the *panchayat* before the order, dated the 20th May, 1955, was passed. I, therefore, see no force in this objection made by the *panchayat*.

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Finally, I may say that if the Collector's order of May, 1955, is considered to be defective on the ground that the *panchayat* was not served before the impugned order was passed, even then I would not interfere in the present proceedings under Article 226 of the Constitution. Admittedly, the

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lease was granted to Ranjha Singh's group and its earlier termination by the Collector in 1953, was in contravention of the Act and beyond the powers of the Collector. It is also clear that this order was obtained by the owners by representation that they had reclaimed the land and on enquiry this representation has been found to be incorrect. The Collector has after a detailed enquiry found that the lessees, in fact, reclaimed the land and actually cultivated a portion of it and that the proprietors took the law into their hands and destroyed the crop sown by the lessees. In these circumstances it must be held that the impugned order is eminently just. Interference with this order at this stage will only result in injustice to lessees and such a result must be avoided in proceedings under Article 226 of the Constitution. The purpose of this power granted to the High Court is to advance justice and to repress injustice. This justice will not be achieved by setting aside the impugned order in the present case.

For these reasons, I dismiss this petition with costs. Counsel's fee Rs. 50.

CIVIL WRIT

Before Bhandari, C.J. and Dulat, J.

SHRI BAL KRISHAN AGGARWAL,—*Petitioner*

versus

THE PUNJAB STATE,—*Respondent*

Civil Writ No. 16 of 1955.

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 April, 24th

Constitution of India—Article 226—Writ of Mandamus—Office and scope of—Principles regarding issuance of or interference in, stated—Article 234—Rules framed under, for appointment of Subordinate Judges—Scope of—Whether retrospective—Selection and appointment, how made—In operation.