

CIVIL MISCELLANEOUS.

*Before Bal Raj Tuli, J.*MAMAN, ETC.—*Petitioners.**versus*THE FINANCIAL COMMISSIONER, ETC.—*Respondents.**Civil Writ No. 3281 of 1972.*

December 20, 1972.

Punjab Security of Land Tenures Act (X of 1953)—Section 19-C—Possession of surplus area given to a resettled tenant—Such tenant dispossessed—Collector—Whether has the jurisdiction to re-deliver possession to the resettled tenant.

Held, that under section 19-C of the Punjab Security of Land Tenures Act, 1953, the Collector can direct the landowner of the tenant, whose land has been declared surplus, to deliver possession to the resettled tenant whenever an allotment is made in his favour. Once the resettled tenant gets possession of the land allotted to him, the jurisdiction of the Collector to deliver the possession of that land to him comes to an end. That jurisdiction is not revived when the resettled tenant is forcibly dispossessed from his land by any person even by the original landowner whose land had been declared surplus. The resettled tenant has to follow the ordinary remedies like other citizens of the country. Thus section 19-C of the Act does not clothe the Collector with the power to restore possession to a forcibly ejected resettled tenant. (Paras 2 and 4).

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 be issued quashing the impugned orders, dated 30th September, 1972, 22nd September, 1972 and 25th July, 1972, passed by respondents 1, 2 and 3, respectively and further praying that dispossession of the petitioners from the land in dispute be stayed ad-interim till the decision of the writ petition.

R. K. Chhokar, Advocate, for the petitioners.

S. P. Jain, Advocate, for Advocate-General (Haryana), for respondents 1 to 3.

J. S. Malik, Advocate, for respondents 4 to 6.

Maman, etc., v. The Financial Commissioner, etc., (Tuli, J.)

JUDGMENT

TULI, J.—Molar was a big landowner, a part of whose land was declared surplus. Respondents 5 and 6 were allotted a part of that land in 1966, and, according to the respondents, they were given physical possession of that land. They were, however, dispossessed by petitioners 1 and 2, who claimed to be the tenants on the land under Molar, the original landowner. On a complaint filed by respondents 5 and 6 in the years 1969 and 70, the Collector, under section 19-C of the Punjab Security of Land Tenures Act, 1953 (hereinafter called the Act), delivered possession of the land to respondents 5 and 6. They have again been dispossessed and again an order has been passed by the Collector under section 19-C of the Act for restoring possession of the land to respondents 5 and 6. That order has been upheld by the Commissioner, Ambala Division. The petitioners have filed this petition for the quashing of this order on the ground that the Collector and the Commissioner have no jurisdiction to restore possession of the land to respondents 5 and 6 after they are alleged to have been forcibly dispossessed. I find substance in the submission made on behalf of the petitioners. Section 19-C, on which reliance has been placed by the respondents, reads as under :—

“19-C. Power to cause delivery of possession of surplus area.

- (1) The Collector may from time to time by order in writing direct the landowner or the tenant to deliver possession of the land in his surplus area to the person resettled on such land by the State Government or any Officer empowered by it within ten days of the service of the order on him.
- (2) If the landowner or the tenant refuses or fails without reasonable cause to comply with an order made under sub-section (1), the Collector may cause the possession of the land in the surplus area to be delivered to the person resettled on it and may for that purpose use such force as may be necessary.”

(2) It is submitted by the learned counsel for the respondents that the words “from time to time” indicate that the Collector has the jurisdiction to restore possession to the resettled tenant any number of times. I regret my inability to agree to this submission.

What the section really means is that the Collector can direct the landowner of the tenant, whose land has been declared surplus, to deliver possession to the resettled tenant whenever an allotment is made in his favour. Once the resettled tenant gets possession of the land allotted to him, the jurisdiction of the Collector to deliver the possession of that land to him comes to an end. That jurisdiction is not revived when the resettled tenant is forcibly dispossessed from his land by any person—even by the original landowner or the tenant whose land had been declared surplus. In that eventuality, the resettled tenant has to follow the ordinary remedies like the other citizens of the country. The Legislature has not given him a right to go to the Collector under section 19-C of the Act for restoration of possession to him on the ground that he has been dispossessed by someone.

(3) It has been submitted on behalf of the State that the petitioners who are rank trespassers, have no right to remain in possession of the land, and therefore, cannot be afforded any relief by this Court in a petition under Article 226 of the Constitution. It was ruled by their Lordships of the Privy Council in *Eshugayi Eleko v. Officer Administering the Government of Nigeria and another*, (1).

“The Executive can only act in pursuance of the powers given to it by law. In accordance with British jurisprudence no member of the executive can interfere with the liberty or property or a British subject except on the condition that he can support the legality of his action before a Court of justice.”

(4) This dictum of their Lordships has been approved by the Supreme Court and the same dictum applies with regard to the jurisprudence of this country. Every Government officer must justify his action before a Court of justice on the basis of some law giving him the authority to take that action. It is frankly admitted by the learned counsel for the respondents that there is no other provision excepting section 19-C *ibid* to confer that power on the Collector. As I have held above, section 19-C does not clothe the Collector with the power to restore possession to a forcibly ejected resettled tenant. He has to follow the ordinary remedies like any other citizen.

(1) A.I.R. 1931 P.C. 248.

The Commissioner of Income-tax v. M/s Indian Motor Transport Co.
(P) Ltd., Karnal (Pandit, J.)

(5) It has also been held by this Court and by the Supreme Court that even a person in unauthorised possession has to be dispossessed in accordance with law and cannot be dispossessed by any officer at his sweet will or taking the law in his own hand. As I have held above, the Collector has no jurisdiction to restore possession of the land to respondents 5 and 6 and, therefore, the impugned orders of respondents 3 and 2, copies of which are Annexures 'D' and 'E' to the writ petition, are without jurisdiction and have to be quashed.

(6) For the reasons given above, I accept this writ petition with costs and quash the impugned orders. Counsel's fee Rs. 100.

N.K.S.

INCOME-TAX REFERENCE

Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.

THE COMMISSIONER OF INCOME-TAX,—Applicant

versus

M/S INDIAN MOTOR TRANSPORT CO. (P) LTD.,
KARNAL,—Respondent.

I.T. Ref. No. 44 of 1971.

January 16, 1973.

Income-tax Act (XI of 1922)—Sections 10(2)(vi-b) and 35(II)—Assessee acquiring new machinery after the specified date, but selling it before ten years of the acquisition—Factum of such sale in the knowledge of the Income-Tax Officer at the time of assessment—Income-Tax Officer—Whether should first allow development rebate in respect of such machinery under section 10(2)(vi-b) and subsequently withdraw it under section 35(II).

Held, that according to clause (vi-b) of section 10(2) of Income-Tax Act, 1922, if all the conditions mentioned therein are satisfied, the assessee is entitled to development rebate on the new machinery acquired by him before a particular date specified therein. One of the conditions specified therein is that the machinery is not sold to any person other than the Government before the expiry of ten years from the end of the year in which it was acquired. If, at the time of