

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

SANTA SINGH,—Petitioner

versus

STATE OF PUNJAB ETC.,—Respondents

Civil Writ No. 3061 of 1970

April 15, 1971

Nazool Lands (Transfer) Rules (1956)—Rule 3—Lease of nazool lands granted by Collector in favour of a number of the Scheduled Castes, as provided under the Rules—Lessee failing to surrender the possession of the land on the expiry of the lease period—Collector—Whether can have recourse to physical force to eject the lessee—Remedies under the ordinary law—Whether must be pursued by the Collector.

Held, that once a lease of nazool lands is granted by the Collector in favour of a member of the Scheduled Castes, as provided by Nazool Lands Transfer Rules, 1956, which are in the nature of executive instructions, a relationship of landlord and tenant arises between the parties and in the absence of any special statute regulating the same, the general law of the land will apply. On the expiry of the lease, the lessee is beyond doubt bound to surrender possession to the lessor but if he fails to do so, there is no competence with the Collector to have recourse to physical force in the absence of any enabling provision in this behalf. He cannot become a judge in his own cause and direct possession to be delivered by a lessee under a threat of the use of physical force. When a lessee continues to occupy the demised premises after the expiry of the lease, the Collector, like any other lessor, must pursue only such remedies as are available under the ordinary law of the land. Even if the lessee becomes a trespasser on the expiry of the lease by afflux of time and is holding over, he is not a trespasser who can be thrown out by an executive order and by the use of physical force but has to be dealt with in accordance with the ordinary law if ejectment is to be sought. (Para 8).

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of mandamus or any other appropriate writ, order or direction be issued directing the respondents not to interfere in the rights, interests and possession of the petitioner in the said Nazool land under lease with him before considering his eligibility for permanent transfer thereof under the said Rules in accordance with law and further praying that pending final disposal of this writ petition, the dispossession of the petitioner from the said land be ordered to be stayed.

R. P. BALI, ADVOCATE, for the petitioner.

SOM NATH GARG, ADVOCATE- FOR ADVOCATE-GENERAL (PUNJAB), for the respondents.

JUDGMENT

Sodhi, J.—(1) Santa Singh, a member of the scheduled caste, at present said to be residing in Kumhar Mandi, in Ludhiana town, was leased out some Nazool land measuring 6 Bighas 15 Biswas 6 Biswansis (Pukhta) situate in village Hassanrora comprised in Khasra No. 44 in the year 1966 by an open auction. He continued in possession as a lessee for the years 1966-67, 1967-68 and 1968-69. The lease was renewed every time for one year and the period of the last lease expired on 15th June, 1969, but he continued to retain possession of the demised land. The lease money was fixed at Rs. 200 for the first year and later raised to Rs. 300 and Rs. 500 respectively, for the subsequent two years, but there is no evidence available on the record as to the terms and conditions on which the lease was granted and neither of the counsel is in a position to throw light in this regard. The writ petition is silent on this point and in the return filed by the Collector, Ludhiana, respondent 2, only the factum of lease is mentioned. It is stated in the return that the land in dispute is within the urban limits of Ludhiana and there is no rebuttal by the petitioner. The petitioner could have controverted this averment by filing a replication of its correctness was sought to be contested. On expiry of the lease, the Collector seems to have issued an order, as stated in para 10 of the return, directing that possession of the land be got delivered to the District Public Relations Officer, Ludhiana, who is presumably the Secretary of the Guru Nanak Quincentenary Celebration Committee as well. A Kanungo was deputed to get the possession delivered. The Collector was under the impression that as the lease had expired, the petitioner could no longer remain in possession and could be ejected therefrom by an executive fiat.

(2) The petitioner apprehending his dispossession under the alleged order of respondent 2 moved this Court to exercise its extraordinary jurisdiction under Articles 226 and 227 of the Constitution and to issue a writ of *mandamus* directing the respondents not to eject the petitioner except in accordance with law. It may be mentioned that no copy of the order has been produced by either of the parties, though it is admitted by respondent 2 that the Deputy Commissioner, Ludhiana, ordered dispossession.

(3) The case of the petitioner is that he is entitled to the transfer of the land under the Nazool Lands (Transfer) Rules, 1956 (hereinafter called the Rules), issued by the erstwhile Pepsu Government

vide notification No. RDI (42) SS/56—24, dated the 28th May, 1957, and which were later adopted by the composite State of Punjab as well after the merger of Pepsu and Punjab in the year 1956. No notification showing that the Rules had been adopted by the State of Punjab was placed on the record, but Mr. R. P. Bali, learned counsel for the petitioner, has today produced a copy of the notification No. JS-(IV)-57/3813, dated the 8th August, 1957; whereby the Governor of Punjab ordered that all Government Nazool; waste and cultivable agricultural lands which had not already been appropriated by the State Government for any departmental use be allotted to the Cooperative Farming Societies to be formed by the members of the Scheduled Castes in accordance with the provisions of the Rules. I have placed on the record this notification marked as 'X'.

(4) Mr. R. P. Bali; learned counsel for the petitioner; has vehemently urged that on the basis of the Rules, he is entitled to the transfer of the land on payment of price as may be fixed in accordance therewith. It is next contended by the learned counsel that apart from the question of considering the eligibility of the petitioner for the transfer of the land under the Rules, the latter cannot be ejected otherwise than in accordance with the procedure prescribed by ordinary law of the land and that there is no power in the Collector to forcibly dispossess the petitioner. The contention in other words, is that no matter that the lease has expired, the Collector, like any other lessor, has to seek his proper remedy in a civil or a revenue Court, as may be permissible under the law.

(5) In support of his first contention, the learned counsel places reliance on a judgment of their Lordships of the Supreme Court in *The Union of India and others, v. M/s. Anglo Afghan Agencies etc.*, (1), and a Single Bench judgment of this Court given by P. D. Sharma J., in *Sowran and others v. The State of Haryana and others*, (2). It is conceded by Mr. Bali that the Rules have not been made in exercise of a rule-making power given under any statute but are in the nature of executive instructions dealing with disposal of Nazool land. "Nazool land" is defined in the Rules in the following terms:—

“(i) the land which has escheated to the State Government and has not already been appropriated by the State Government for any purpose ;

(1) A.I.R. 1968 S.C. 718.

(2) 1968 P.L.J. 142.

- (ii) such other land as the State Government may make available for being transferred under these rules;”.

Directions in the matter of transfer of Nazool land are contained in clauses (a), (b) and (c) of rule 3. For facility of reference, the said rule 3 may be reproduced hereunder *in extenso* :—

“3. *Transfer of Nazool lands.*

- (a) In a village where Nazool land available is less than 10 acres and is being leased to members of Scheduled Castes, it may be allotted to the present lessees individually upto the limit of unit of Nazool land, provided they do not own any land of their own. Those who own some land, they may be allowed such area as would make up the unit of Nazool land as defined in the Rules, when added to their own land, and the rest may be allotted to others.
- (b) In the villages where Nazool land available is 10 acres or more, the Scheduled Castes land owing Cooperative Societies may be formed by the heads of Scheduled Castes families in accordance with these rules, and the Nazool land may be allotted to them. In a village where no cooperative societies of the members of the Scheduled Castes had been formed by the 16th May, 1964, the land should be allotted to individual Harijans instead of Harijan Cooperative Societies according to these Rules. For this purpose, members of the Scheduled Castes who are already cultivating such lands are to be preferred. In case there is more than one claimant for the same piece of land, the allotment will be made by drawing lots.
- (c) Nazool lands already under self-cultivation of landless persons of backward classes may be allotted to them, like members of Scheduled Castes in the manner prescribed at (a) and (b) above.”

(6) Heads of landless families of Scheduled Castes in a village are to form themselves into a Cooperative Society and if a dispute arises as to who is the head of such a family, it is to be decided by the Collector of the district. Any person aggrieved by a decision of the Collector in this respect has a right of appeal to the Commissioner within fifteen days. Rule 5 requires that as soon as a Cooperative Society has been formed in a village, the Nazool land in

that village shall be transferred to it, and in case of the dissolution of a Cooperative Society, the land transferred to it stands reverted to the State Government. The mode of fixing price of the land so transferred is stated in rule 8. A Cooperative Society wanting to have any land transferred to it has to make an application to the Collector who can have his inquiries made in order to verify the contents of the application and if satisfied as to the genuineness of the claim of the Society, he shall transfer the land in favour of the Society in accordance with the rules. There is then issued a certificate of transfer. An individual Scheduled Caste member can also be transferred Nazool land where no Cooperative Society has been formed, but a person already cultivating such land has to be given preference. A perusal of rule 3 leaves no room for doubt that these Rules which are just executive instructions are intended to apply to those Nazool lands only which are situate in a village.

(7) Respondent 2, in his affidavit in reply to the writ petition, has stated in unequivocal terms that the land leased out to the petitioner is situate within urban limits and since no rejoinder to this averment has been filed by the petitioner, I have to accept the statement of the Collector and hold that the land to which the dispute relates is not situate in a village. In such a situation, the Rules do not apply to the land in question and it is, therefore, unnecessary to decide whether the petitioner is entitled to have his claim for eligibility for transfer considered by the Collector, respondent 2, in terms of the Rules. Normally, executive instructions cannot confer a legal right enforceable in a Court of law; but P. D. Sharma; J. in *Sowran's case* (2), relying on the Supreme Court judgment in *M/s. Anglo Afghan Agencies case* (1) (supra) allowed the writ petition and directed the Collector not to interfere in the rights; interests and possession of the lessees in the Nazool land under lease with them before considering their eligibility for permanent transfer thereof under the Rules. What happened there was that lease of some land was auctioned in favour of Sowran and others; writ petitioners; and it was announced that the lands would be transferred to the Harijan lessees on payment of 90 times the land revenue. The writ petitioners offered the highest bids for different parcels of lands and obtained the same as lessees. They subsequently spent some money on improvement of the land in their possession as lessees, presumably on the assurance given at the time of auction of the lease that the land would be transferred under the Rules to the lessees. After some time, the State Government changed its mind

and decided that 50 per cent of the Nazool land should be sold by public auction and only the remaining 50 per cent be given to the lessees by restricted auction. It was in these circumstances that the learned Judge relying on *M/s. Anglo Afghan Agencies case* (1) allowed the writ petition. There is no evidence in the present case that any such assurance was given at the time of auction by the State Government and the facts are, therefore, clearly distinguishable on this short ground alone. In this view of the matter, it is not necessary for me to pronounce on the question as to whether the petitioner has, under the executive instructions, described as rules, any legal right to claim transfer of the land earlier leased out to him and which is in his cultivating possession. I am indeed doubtful if any such legal right can possibly arise in favour of the petitioner but do not find it necessary to refer this case to a larger Bench since I am holding that the Rules are not applicable in this case. The first contention of the learned counsel must, therefore, be repelled.

(8) The other contention has, to my mind, sufficient force and must be accepted. Once a lease has been granted by the Collector in favour of a member of the Scheduled Castes, a relationship of landlord and tenant arises between the parties and in the absence of any special statute regulating the same, the general law of the land will apply. On the expiry of the lease, the lessee is beyond doubt bound to surrender possession to the lessor but if he fails to do so, there is no competence with the Collector to have recourse to physical force in the absence of any enabling provision in this behalf. He cannot become a judge in his own cause and direct possession to be delivered by a lessee under a threat of the use of physical force. When a lessee continues to occupy the demised premises after the expiry of the lease, the Collector, like any other lessor, must pursue only such remedies as are available under the ordinary law of the land. He, in the instant case, admittedly exceeded his powers in directing the Kanungo to go to the spot and have the possession taken from the petitioner by force. The petitioner stated in the writ petition that he was threatened to be forcibly dispossessed and this averment is not denied by respondent 2 in his affidavit in reply, and all that is stated by the latter is that "according to the terms and conditions of the lease and after expiry of lease period the State Government have to take back the possession of the land in dispute." Even if it be assumed that the petitioner had become a trespasser on the expiry of the lease by efflux of time on 15th June, 1969, and was holding over, he is not

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a trespasser who could be thrown out by an executive order and by the use of physical force but has to be dealt with in accordance with the ordinary law if ejection is to be sought.

(9) In the result, the writ petition is allowed and a writ of mandamus ordered to issue to the respondents directing them not to dispossess the petitioner from the land leased out to him except in accordance with law. There is no order as to costs.

K. S. K.

LETTERS PATENT APPEAL

Before R. S. Narula and H. R. Sodhi, JJ.

RAM CHAND,—Appellant.

versus

THE STATE OF HARYANA ETC.,—Respondents.

Letters Patent Appeal No. 762 of 1970.

April 15, 1971.

East Punjab Utilization of Lands Act (XXXVIII of 1949 as amended by Act XXIV of 1957)—Section 6—Constitution of India (1950)—Articles 13(2) and 14—Punjab Tenancy Act (XVI of 1887)—Section 77—Section 6 as introduced in Act 38 of 1949 by section 2 of Act 24 of 1957—Whether ultra vires Articles 13(2) and 14, Constitution of India—Other provisions of Act 24—Whether severable from section 2—Subsequent taking away the alternative remedy as enacted by section 6—Whether validates the section.

Held, that by section 2 of East Punjab Utilization of Lands Act, 24 of 1957, section 6 has been introduced in the principal Act, East Punjab Utilization of Lands Act, 38 of 1949. This section provided for two alternative remedies for determining a lease granted under the Act. Before the enactment of this section, the Collector had the authority to get a lease determined and to eject a lessee by resort to the ordinary civil proceedings in a revenue Court under section 77 of the Punjab Tenancy Act. Section 6 of the Act as enacted in 1957, further made available to the Collector an alternative and more drastic remedy than the ordinary pre-existing one under section 77 of the Punjab Tenancy Act. Section 6, therefore, is void under Article 13(2) of the Constitution as being violative of the guarantee of equal protection of laws enshrined in Article 14 of the Constitution. (Para 29).