

Satya Dev
v.
The State of
Punjab
and another

Dua, J.

rights. It may, therefore, appropriately be emphasized that it is the effectiveness of the judicial scrutiny that sustains and vitalizes the democratic system of Government of our pattern by preserving, promoting and strengthening the citizens' faith in the checking potentialities of the rule of law which is one of the basic pillars of our Constitution. In the case before us, therefore, to exclude this Court's power is difficult to sustain on principle. The ratio of the Full Bench decision and of the various decisions of the Supreme Court noted above also do not support the argument of exclusion. As concluded by my learned brother in his lucid and well-considered judgment, the impugned order is outside the law and without jurisdiction.

With these observations, I entirely agree with the order proposed.

B.R.T.

REVISIONAL CRIMINAL

Before Shamsher Bahadur, J.

GURBAX SINGH,—Petitioner

versus

MOHD. SHAFI AND OTHERS,—Respondents

Criminal Revision No. 721 of 1963.

1963
Dec., 17th.

Code of Criminal Procedure (Act V of 1898)—Section 145—Land attached during the proceedings under and leased out to the highest bidder—Such a lessee—Whether a tenant as defined in Section 9 of the Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Balance of lease money due—Whether can be recovered after the termination of proceedings under section 145.

Held, that the concept of a tenant under the Pepsu Tenancy and Agricultural Lands Act, 1955, is the same as under the Punjab Tenancy Act and a person who gave

the highest bid for the lease of the land attached during the proceedings under section 145 of the Code of Criminal Procedure does not become a tenant under these Acts. Such a person is, under a special contract, liable to make the payment of the amount of his bid and a person, who has such a liability under a special contract, is excepted from the definition of tenant under the Punjab Tenancy Act. Hence such a person cannot claim that only one-third of the value of produce should be the lease money.

Held, that while the land was under attachment under section 145 of the Code of Criminal Procedure, the Court was acting as *custodia legis* and was bound to recover the dues in respect of the period it was under its custody. In case the land was given on lease, the lessee is bound to pay the full lease money in respect of the period of the lease and if a part of it is still due when the proceedings under section 145 terminate, it can be recovered notwithstanding their termination.

Petition under section 435/439, Criminal Procedure Code, for revision of the order of Shri Om Parkash Sharma, Additional Sessions Judge, Patiala, dated 13th May, 1963, affirming that of Shri Raja Ram Singh, Sub-Divisional Magistrate, Rajpura, dated 1st February, 1963, ordering that the remaining amount of Rs. 1950, should be recovered from the petitioner immediately under rules.

J. S. WASU, ADVOCATE, for the Petitioner.

SUNDER LAL, ADVOCATE, for the Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—This rule is directed against the order of the learned Additional Sessions Judge, Patiala, who declined to interfere in the exercise of his revisional jurisdiction with the order of the Sub-Divisional Magistrate, Rajpura, directing recovery of a sum of Rs. 1,950 from Gurbax Singh, petitioner.

Shamsher
Bahadur, J.

Land measuring 37 *bighas* and 14 *biswas* in village Alamdipur came to be attached in proceedings under section 145 of the Code of Criminal Procedure. The attached land was placed under the

Gurbax Singh
v.
Mohd. Shafi
and others

Shamsher
Bahadur, J.

receivership of Field Kanungo, Ghanaur and in furtherance of his duty to manage it properly he gave it out on lease to the highest bidder. In an open auction, the petitioner Gurbax Singh gave the bid of Rs. 2,600 which was accepted and a sum of Rs. 650 was actually deposited at the time. Gurbax Singh having declined to make the payment of the balance of the lease money proceedings were taken for its recovery by the person who was entitled to it. The Sub-Divisional Magistrate after considering the pleas raised by Gurbax Singh reached the conclusion that he was liable to make the payment of the sum of Rs. 1,950 and directed its recovery in accordance with rules. This order has been affirmed in revision by the learned Additional Sessions Judge, Patiala.

It has now been urged by Mr. Wasu that the proceedings under section 145 of the Code of Criminal Procedure having terminated, the Sub-Divisional Magistrate did not have any jurisdiction to entertain an application for recovery of arrears of lease money. This, in my opinion, is not a correct approach to the problem. While the land was under attachment under section 145 of the Code of Criminal Procedure, the Court was acting as *custodia legis* and was bound to recover the dues in respect of the period it was under the receivership of Field Kanungo.

It has further been contended by the learned counsel that the Sub-Divisional Magistrate should have taken note of section 9 of the Pepsu Tenancy and Agricultural Lands Act, 1955, under which in spite of any agreement, usage, decree or order of a Court, "the maximum rent payable by a tenant in respect of the land leased to him shall not exceed one-third of produce of the land or the value of such produce, as the case may be." This point was taken up before the Sub-Divisional Magistrate and did not find favour with him. The concept of a tenant under the Pepsu

Tenancy and Agricultural Lands Act, 1955, is the same as under the Punjab Tenancy Act which defines a tenant under sub-section (5) of section 4 as the person "who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person; . . .". In my opinion, Gurbax Singh who gave the highest bid for cultivation rights in respect of Rabi crop, could not be regarded as a tenant. He was under a special contract liable to make the payment of Rs. 2,600, which was the highest bid. A person, who has such a liability under a special contract is excepted from the definition of tenant under the Punjab Tenancy Act.

There is thus no force in this petition which fails and is dismissed. The amount of Rs. 650 which has already been deposited will be realized by the respondents, who would be entitled to the recovery of the balance as indicated in the order of the Sub-Divisional Magistrate, Rajpura.

R. S.

FULL BENCH

*Before Inder Dev Dua, Daya Krishan Mahajan, and
H. R. Khanna, JJ.*

DAVINDER SINGH AND ANOTHER,—*Petitioners*

versus

DEPUTY SECRETARY-CUM-SETTLEMENT COMMISSIONER, RURAL, REHABILITATION DEPARTMENT, PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1670 of 1962.

Constitution of India (1950)—Article 226—Petitioner for writ under—Whether can be permitted to raise objection to inherent lack of jurisdiction of the tribunal whose

Gurbax Singh
v.

Mohd. Shafi
and others

Shamsher
Bahadur, J.

1964

Feb., 17th