

The Indian Law Reports

LETTERS PATENT APPEAL

Before S. S. Dulat and S. B. Kapoor, JJ.

LILU AND OTHERS,—*Appellants*

versus

KARAM CHAND AND OTHERS,—*Respondents*

Letters Patent Appeal No. 171 of 1959.

East Punjab Utilization of Lands Act (XXXVIII of 1949)—S.5—Collector—Whether can lease out the land for the balance of the period of 20 years mentioned in the proviso to S.5.

1960

October, 10th

Held, that under section 5 of the East Punjab Utilization of Lands Act, 1949, as amended by Punjab Act No. 32 of 1953, the Collector can retain the possession of the land for 20 years and during this period there is no restriction on his power to effect leases of the land provided that the period of no lease is less than 7 years and no lease goes beyond 20 years from the date of the original taking possession of the land. This power can be exercised either during the currency of the original lease or on its expiry provided, of course, that the maximum period of 20 years from the date of taking of possession of the land is not exceeded.

Letters Patent Appeal under Clause 10 against the Judgement of Hon'ble Mr. Justice Mehar Singh, passed on 21st May, 1959, in Civil Writ No. 9 of 1959.

S. D. BAHRI, G. P. JAIN, AND V. P. KAKARIA, ADVOCATES, for the Appellants.

G. C. MITAL AND M. R. PUNJ, ADVOCATES, for the Respondents.

JUDGMENT

CAPOOR, J.—The only question for decision in this appeal under clause 10 of the Letters Patent is the interpretation of the proviso to section 5 of the East Punjab Utilization of Lands Act (No. XXXVIII of 1949)—hereinafter referred to as the Act—and it arose in the following circumstances.

Capoor, J.

Karm Chand, Lal Chand and Fatta Ram are displaced persons to whom 170 acres of land in village Majhala, tahsil Kaithal, district Karnal, have been allotted. Presumably, because the allottees had not been able to arrange

Lilu
and others
v.
Karam Chand
and others

Capoor, J.

for the cultivation of the land, the Collector, Karnal District, acting under section 3 of the Act, took possession of the land sometime in June, 1951. Section 5 of the Act provides that where the Collector has taken possession of any land under section 3, he may lease it to any person on such terms and conditions as he may deem fit for the purpose of growing food and fodder crops, but the proviso to this section is that the period of lease shall not be less than 7 years or more than 20 years. The Collector proceeding under section 5 leased out the land for a period of seven years to Keeru and Jumman. Subsequently, it transpired that the lessees had sublet the land to one Leelu and some other persons, who actually cultivated part of it. During the currency of the lease, the allottees Karm Chand and others took possession of part of the land, which they cultivated. When the lease was about to expire or had already expired, the allottees approached the Collector under section 7 of the Act for restoration of possession of the entire land. On the 18th of July, 1958, the Collector passed his order (copy annexure 'B'), in which he directed that certain specified fields which were still lying *banjar* and certain other fields, which had been broken by the allottees without authority should be returned to them on certain conditions (which are not material for the purposes of this appeal). The possession over the remaining land was to remain with Leelu and others (who had actually cultivated it) and they were directed to execute a fresh lease deed for the balance of the permissible period of 20 years, and the original lease in favour of Keeru and Jumman was to be treated as terminated.

Against this order, the allottees, i.e., Karm Chand, Lal Chand and Fatta Ram and some others went up to the Commissioner, Ambala Division, in revision under the provisions of sub-section (1) of section 14 of the Act, but the Commissioner by his order, dated the 22nd of September, 1958 (Copy is annexure 'C') maintained the lease in favour of Leelu and others, though he directed that the land to be so leased out should be from the shares of (a) Karam Chand and (b) Lal Chand on fifty-fifty basis. Against the orders of the Collector and the Commissioner, Karm Chand, Lal Chand and Fatta Ram filed a civil writ petition under Articles 226 and 227 of the Constitution of India in which the respondents were—(1) Collector Karnal,

(2) Jumman, (3) Keeru and (4) Leelu. The learned Single Judge who heard the writ petition was of the view that the Collector, who had leased out the land within the scope of the Act, had no power to extend that lease beyond the period of the original lease. Accordingly, accepting the writ petition, he quashed the orders of the Collector and the Commissioner and he further directed respondents 2 to 4 to bear the costs of the petitioners.

Lilu
and others
v.
Karam Chand
and others
Capoor, J.

Against this order, Leelu and Keeru have filed this appeal. There is an application on behalf of the State that the Collector, who is shown as one of the respondents in the Letters Patent appeal, should be transposed as the appellant. This application was accepted by the learned Judge of this Court on the 15th of December, 1959.

Mr. G. C. Mital on behalf of Karm Chand, etc., the allottees, raised a preliminary objection to the effect that inasmuch as the Collector, Karnal, did not contest the writ petition nor was an appeal filed by the Collector within the period of limitation, he cannot now be permitted to be transposed as an appellant and in support of his contention, the learned counsel relied on certain observations in *Ravipudi v. State of Andhra Pradesh* (1), at page 137. The facts of the cases giving rise to the second appeals before the Andhra Pradesh High Court were that the plaintiffs claimed to be owners in possession and enjoyment of certain properties from time immemorial and at any rate for a period of sixty years. The first defendant in the two suits was the Government and the other defendants claimed to be grantees of the lands in suits from the Government. The Government did not contest the suits and the trial Court gave the declaration sought for by the plaintiffs not only against the Government, but also against the other defendants. These other defendants appealed and their appeals were accepted by the Subordinate Judge and the plaintiffs' suits dismissed. The learned Judge of the Andhra Pradesh High Court held that as the Government did not appeal, the decree against the Government had become final and binding and the fact that the other defendants had appealed, would not, in any manner, alter the case of the Government or affect the decree against

(1) A.I.R. 1960 A.P. 134.

Lilu
and others
v.
Karam Chand
and others
—
Capoor, J.

the Government, which had become final. These observations have, however, no application whatever to the present case. The appeal under clause 10 of the Letters Patent by Leelu and Keeru is admittedly within time and it is a matter of academic interest only whether the Collector, Karnal, remains respondent in appeal or is transposed as an appellant. Mr. G. C. Mital then maintained that inasmuch as the writ was directed against the Collector and the Commissioner, Keeru and Leelu had no *locus standi* to appeal, but this argument is obviously unsustainable because they were parties to the civil writ and their rights are affected by the order made therein. I can accordingly find no substance in the preliminary objection raised by Mr. G. C. Mital.

Coming now to the merits of the case, the only question, as stated above, is whether under the provisions of section 5 of the Act, it was open to the Collector to lease out the land for the balance of the period of 20 years mentioned in the proviso to the section. The word 'lease' is used in singular number in this proviso, but according to the general principle of interpretation as provided in section 11 of the Punjab General Clauses Act (No. 1 of 1898), the words in the singular shall include the plural, and it was conceded by Mr. G. C. Mital, that after the Collector has, under section 3 of the Act, taken possession of the land, he may make several leases of different portions of it to different persons. Section 12 of the Punjab General Clauses Act provides that where by any Punjab Act, any power is conferred, then that power may be exercised from time to time as occasion requires, and there can, therefore, be no bar to the Collector leasing out part of the land at one time and the remaining part of it at another. Moreover, these leases can be for different periods provided, of course, that the minimum is seven years and the maximum of 20 years is not exceeded. Mr. Mital, however, contended further that if once a lease of any part of the land is made for a particular period, then after the expiry of that period, the Collector's power to renew the lease or to make a fresh lease thereof is exhausted even though—as in the present case—13 years still remain out of the maximum period of 20 years mentioned in the proviso to section 5. There appears to be no logic behind this argument and the plain words of the section do not envisage any such restriction on the powers of the Collector.

Mr. Mital, then argued that the professed object of the Act was to promote the "grow more food" campaign by taking from the landowners those lands which they had not broken for cultivation and leasing them out to some other person or persons for the purpose of growing food and fodder crops. He further maintained that the owners were not being deprived of the land permanently, but possession of it was being taken by the Collector only as a temporary measure. This was no doubt the scheme of the Act as it was originally enacted. Under the proviso to section 5, as it originally stood, the period of lease in the case of evacuee land was not to exceed one harvest at a time and in the case of other land was not to exceed two years. Under section 4, the persons from whom possession was taken were entitled to be paid compensation not below the prevailing rates of rent in the locality for similar land in similar circumstances to be determined in the manner prescribed. Under section 6, the Collector on being satisfied, on an application made to him in this behalf that the owners had made arrangements for the cultivation of the land was to terminate the lease made by him under section 5. Section 7 provided for the return of the land to its owner on the expiry of the lease or its earlier termination. Radical amendments were effected in the Act by the East Punjab Utilization of Lands (Amendment) Act (No. XXXII of 1953). Section 6 was omitted altogether. Under section 4 as introduced by the amending Act, the compensation was to be determined substantially in accordance with the provisions of section 23(1) of the Land Acquisition Act (No. I of 1894). Thus compensation had to be assessed on the basis of the market value of the land and Mr. Som Dutt Bahri, on behalf of the Collector has, therefore, argued that having paid the market value, the Government became the owner of the land and that it was open to the Collector acting as the agent of the Government whether to lease it out or not, though if he did choose to lease it, the period shall not be less than 7 years or more than 20 years. This argument derives support from the consideration that on account of the omission of section 6 the person, from whom the land was taken into possession, no longer has the statutory right to apply for its restoration even though he has since made arrangement for the cultivation of the land, but it would perhaps not be correct to say that the Government became

Lilu
and others
v.
Karam Chand
and others

Capoor, J.

Lilu
and others
v.
Karam Chand
and others
Capoor, J.

the owner of the land because sub-section (1) of section 7 of the Act still speaks of the 'owner' to whom the land is to be returned. For the purposes of this appeal, however, it is unnecessary to decide whether the Government became the owner or not or whether it is open to the Government even after the expiry of 20 years from the date of taking possession to retain possession of the land, and for the purpose of this appeal it may be assumed that the Collector may not retain the possession of the land for more than 20 years. During this period, however, there would appear to be no restriction on his power to effect leases of the land provided that the period of no lease is less than 7 years, and no lease goes beyond 20 years from the date of the original taking of the possession of the land.

The learned Single Judge was also of the opinion that if section 5 alone was to be considered, he would have accepted the contention that there was no bar to the Collector once having leased the land for a period of seven years or more, but less than 20 years, to lease it again whether to the same person or to the others to make the maximum period of 20 years. The difficulty arises over the consideration of sub-section (1) of section 7 as to what is to happen 'on the expiry of the lease'. The material provision is as follows:—

"7(1) Where any land taken possession of by the Collector under section 3 is on the expiry of the lease * * * to be returned to the owner, the Collector may after making such enquiry, if any, as he considers necessary specify by order in writing the person to whom possession of the land shall be given."

The words "or its earlier termination" were omitted by virtue of the amendment effected by section 7 of Punjab Act No. XXXII of 1953, and it appears clear that no coherent amendments, keeping in view the implications of the amendments effected in the proviso to section 5 and the omission of section 6 of the Act, as it stood earlier, were made in sub-section (1) of section 7. On the basis of sub-section (1) of section 7, as it now stands, Mr. Mital argues that supposing a lease was made for a maximum period of 20 years and the land would have to be returned to the

owner on the expiry of the lease, and the same course must be followed by the Collector even if the lease was for a period of less than 20 years. I do not, however, consider that with this argument, by analogy, it is possible to restrict the powers of the Collector as conferred under section 5 of the Act to extend the original lease of the land beyond 7 years, or after the expiry of the smaller period to grant a new lease, so that the period of twenty years from the date of taking possession has not exhausted. The phrase "the expiry of the lease" as used in sub-section (1) of section 7 must be co-related to the expiry of any lease or leases granted by the Collector within the powers conferred on him under section 5 of the Act.

Mr. Mital, sought to reinforce his argument by reference to the provisions of section 14 of the Act, according to which an appeal against the order of the Collector lies to the Commissioner and a revision to the State Government or the Financial Commissioner. He gave a hypothetical case in which the Collector had granted a lease for a period of 15 or 20 years and on appeal or revision by the owner of the land, the Commissioner after hearing the parties reduced the period to the minimum of 7 years, and he maintained that in such a case, it would not be open to the Collector to extend the period or to grant a new lease. This argument is, however, purely hypothetical and does not arise at all in the present case.

In the course of arguments, reference was made to some other decisions of the learned Single Judges of this Court. In *Smt. Indra Rani v. Commissioner of Ambala Division* (Civil Writ No. 1408 of 1959), decided on the 17th of May, 1960, the learned Single Judge followed the decision of the learned Single Judge from whose judgment the present appeal has arisen. On the other hand, G. L. Chopra, J., in *Narain Das v. Collector Karnal and others* (Civil Writ No. 203 of 1958) decided on the 24th of February, 1959, and Shamsheer Bahadur, J., in *Yog Dhian v. Collector, Karnal and others* (Civil Writ No. 775 of 1958) decided on the 29th of May, 1959, have held that though the lease made by the Collector was originally for a period of 7 years, he had power to extend the lease up to the maximum of 20 years. Mr. G. C. Mital, on behalf of the respondents sought to distinguish these cases on the

Lihu
and others
v.
Karam Chand
and others
—————
Capoor, J.

Lilu
and others
v.
Karam Chand
and others
—
Capoor, J.

ground that in both of them, the period of lease was extended before the original lease had expired, while in the instant case the order of the Collector which is being impugned was passed after the expiry of the original period of 7 years. I do not see, however, how for the purpose of section 5 of the Act, it would make any difference whether the period of the original lease is renewed or whether a new lease is granted, but so that the maximum period of twenty years is not exceeded. If it is conceded that by making the lease in the first instance the power of the Collector under section 5 is not exhausted, it would follow that this power can be exercised either during the currency of the original lease or on its expiry provided, of course, that the maximum period of 20 years from the date of taking of possession is not exceeded. Accordingly, the two decisions, *Narain Das v. Collector, Karnal and others* and *Yog Dhian v. Collector Karnal and others* would appear to support the stand taken by Mr. Som Datt Bahri on behalf of the State.

The conclusion, therefore, is that the orders impugned in the writ petition were not outside the scope of the statute and are thus not liable to be quashed. I would, therefore, reversing the order of the learned Single Judge, allow the appeal with costs.

Dulat, J.

S. S. DULAT, J.—I agree.

B.R.T.