

the Courts in India, as I have already indicated above, have taken the view that an order under section 48, Civil Procedure Code, can be passed by an executing Court and the decision to the contrary in the Lahore case cannot, with due respect, be considered to be in accordance with law. I find myself unable to follow the Lahore case.

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For these reason, I am of the opinion that the words "subsequent order" in section 48(1)(b), Civil Procedure Code, include an order passed by the executing Court in execution proceedings and this conclusion is in accord with the view of Allahabad, Bombay, Calcutta and Nagpur Courts with which I respectfully agree.

The result is that the execution application filed in the present case on the 1st October, 1948, for enforcing the compromise, dated the 27th August, 1946, must be held to be within time and not barred under section 48(1)(b), Civil Procedure Code, as amended by section 11, Punjab Debtors' Protection Act. This appeal, therefore, fails and is dismissed with costs.

BHANDARI, C. J.—I agree.

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LETTERS PATENT APPEAL

Before Bhandari, C.J. and Bishan Narain, J.

SHRI LADLI PERSHAD JAISWAL,—Appellant

versus

THE COLLECTOR, KARNAL,—Respondent

Letters Patent Appeal No. 41 of 1953.

East Punjab Utilization of Lands Act (XXXVIII of 1949)—Sections 5 and 11—Lease granted under—Collector whether can cancel such lease and take possession by force.

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Held, that it is 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 the use of force.

Letters Patent Appeal under Clause 10 of the Letters Patent from the order of Honourable Mr. Justice Khosla, passed on 16th June, 1953, in Civil Writ No. 332 of 1952, affirming that of Shri R. I. N. Ahooja, Collector, Karnal, dated the 19th September, 1952, terminating the lease in favour of Shri Jaiswal and ordering to take back possession of the land from him. Suit land measuring 674 acres in village Siana Saidan, Tehsil Kaithal.

B. R. TULI, for Appellant.

D. K. MAHAJAN, for Respondent.

JUDGMENT

Bhandari, C.J. BHANDARI, C.J.—This appeal under clause 10 of the Letters Patent raises the question whether the Collector was justified in directing that the petitioner should be thrown out of the land which was leased out to him under the provisions of the East Punjab Utilization of Lands Act.

In June, 1951, the Collector of Karnal made a public announcement that in exercise of the powers conferred upon him by the East Punjab Utilization of Lands Act, 1949, he proposed auctioning the leases of culturable waste lands situate in the Karnal District. The leases were sanctioned on the 26th June, 1951, and the petitioner who obtained leases of two plots of land measuring 274 and 400 acres respectively was put in possession of the said plots on the 5th August, 1951. He

laid out large sums of money in reclaiming the land and making it fit for cultivation but was later surprised to discover that on the 9th September, 1952. the Collector had passed an order cancelling his lease in respect of 556 acres of land and directing that the possession of the land be taken from him. The order of cancellation was based on the fact that the petitioner had failed to comply with the conditions of the lease as announced at the time of auction by his failure to pay the annual rent of the land on or before the 15th January, 1952, and by his failure to execute a bond in favour of the Collector. The petitioner promptly sought the intervention of this Court under Article 226 of the Constitution and obtained an order staying his eviction from the property.

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The learned Judge before whom the petition came up for hearing came to the conclusion that it was difficult to hold an enquiry with the object of ascertaining whether the terms of the agreement had been violated, that in the absence of evidence it was difficult to decide whether the terms of the lease had or had not been contravened, that the order passed by the Collector did not appear to have been passed under the provisions of the Act and that if the petitioner was aggrieved by the order of the Collector it was open to him to pursue the remedies which are available to a litigant under the ordinary law of the land. The petitioner is dissatisfied with the order and has presented an appeal under clause 10 of the Letters Patent.

The East Punjab Utilization of Lands Act, 1949, was enacted with the object of utilizing waste lands in the Punjab for the growth of food and fodder crops. Section 3 empowers the Col-

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lector to take possession of any land which has not been cultivated for a certain number of harvests; section 5 authorises him to lease it out to any person on such terms and conditions that he may deem fit; section 7 empowers him to obtain possession of the land on termination of the lease; section 8 provides a penalty for failure of the tenant to grow food or fodder crops; and section 10 declares that all sums due under the Act are recoverable as arrears of land revenue. Section 11 is in the following terms:—

“11. The Collector may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be reasonably necessary for securing compliance with any order made by him under this Act.”

The question which falls to be determined in the present case is whether the terms of the lease announced at the time of auction can be deemed to be orders made by the Collector under the provisions of Section 5 of the Statute, for the power conferred upon the Collector under the provisions of section 11 to take such steps and to use such force as may be necessary for compliance with his orders can be invoked only in respect of an order which has been made by him under the provisions of the Act.

The learned counsel for the Collector contends that section 5 confers full powers on his client to grant leases of land on such terms and conditions that he may consider necessary or appropriate, that in exercise of the powers conferred by this section the Collector granted a lease in favour of the petitioner, that the terms of the lease must be deemed to be orders made by the

Collector under the provisions of the statute and that as the petitioner committed a breach of the terms of the said lease and disobeyed the orders passed by him it was within the competence of the Collector, in view of the provisions of section 11 to direct that the possession of the land be taken from the petitioner. The petitioner, it contended, failed to fulfil his agreement for according to the terms of the lease which were read out to the public at the time of auction it was incumbent on the petitioner to pay the annual rent on or before the 15th January, 1952, and to execute an agreement in favour of the State. The petitioner violated both these conditions, for he did not pay the lease money till the 24th April, 1952, and did not execute an agreement at all.

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The petitioner on the other hand has placed two submissions before us. He contends in the first place that although section 5 empowers the Collector to grant leases on such terms that he may consider necessary, there is no provision of law which empowers him to cancel a lease which has been granted. If a lessee fails to grow food or fodder crops on the land leased out to him he may be punished under the provisions of section 8, and if he fails to pay the sums due under the Act they may be recovered as arrears of land revenue under the provisions of section 10. The Collector, it is argued, can cancel a lease only if it is found by a Court of law that the lessee has committed a breach of the terms which would justify its cancellation. Secondly, it is contended that in the actual fact the petitioner did not violate the terms of the lease. According to the petitioner, the date for the payment of rent for the first year was to be fixed by the Collector after delivering possession of the land to the petitioner and at the time of the execution of the deed of lease. This contention is

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sought to be supported by the fact that the printed form of lease which was to be executed by him does not specify the date for the payment of the rent for the first year although it mentions that the rent for the subsequent years would be payable on the 15th January each year. The petitioner paid the rent on the 24th April, 1952, and as this payment was accepted by the Collector he was precluded by reason of this acceptance from cancelling the lease on the ground only that the rent had been paid after the 15th January, 1952. Again it is contended that the Collector has admitted in his written statement that the execution of the deed of lease was not necessary. It follows as a consequence that the Collector had no jurisdiction to cancel the lease either on the ground that the rent had not been paid in time or on the ground that the petitioner had failed to execute the lease deed.

After a careful consideration of the arguments which have been addressed to us I am of the opinion that the contention put forward on behalf of the Collector cannot bear a moment's scrutiny. Section 5 merely empowers a Collector to specify the terms or conditions on which the lease would be granted. If a person accepts the terms and conditions specified by the Collector, a valid and enforceable contract comes into being between the Collector on the one hand and the lessee on the other. If a dispute later arises in which the Collector declares that one of the conditions of the lease has been violated and if the lessee denies such violation, the matter in controversy between the parties must obviously be decided by the Civil Courts, for the right to determine actual controversies arising between adverse parties vests in Courts of law. Our attention has not been invited to any provision of law which

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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J.

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—

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