

The Indian Law Reports

LETTERS PATENT APPEAL

Before D. K. Mahajan and Gopal Singh, JJ.

DEVI CHAND,—Appellant

versus

CHATAR SINGH, ETC.,—Respondents.

Letters Patent Appeal No. 584 of 1970.

January 4, 1971.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Sections 7, 7-A, 8 and 32-E—Tenant inducted by a landowner on his permissible area after coming into force of the Act—Such tenant not committing breach of the provisions of section 7—Whether liable to eviction after the expiry of three years.

Held, that under section 32-E of the Pepsu Tenancy and Agricultural Lands Act, 1955, all surplus land vests in the State Government and the landowners lose all interest therein. Section 7-A has been enacted in order to enable a landowner to get rid of these tenants who were already there on his permissible area. The only embargo is that certain tenants, who fall within sub-sections (2) and (3) of section 7-A of the Act can only be disturbed upto a limited extent. Section 8 has been made subject to section 7 only for the obvious reasons that section 8 provides a fixed period of three years for a tenant who is inducted after the coming into force of the Act, but that period of three years is made subject to the conditions set out in section 7, that is, if a tenant breaches any of these conditions, he can be evicted within the period of three years. No mention of section 7-A has been made in section 8, because section 7-A was enacted to meet a totally different situation. The object of enacting section 8 is that it permits a landowner holding permissible area to induct a tenant and not to be deterred by the provisions of the Act to take tenant to help him in cultivation of his permissible area. Section 8 fixes a minimum period for which a tenant if inducted by a landowner on a permissible area after the Act can hold on the land. Hence a tenant inducted on the permissible area of landowner after the enforcement of the Act can only be ejected after the expiry of three years fixed in section 8 even without any breach of the provisions of section 7 of the Act. If such a tenant breaches any of the provisions of section 7, he can be evicted even within the period fixed by section 8.

(Paras 7, 7 & 8)

Letters Patent Appeal under Clause X of the Letters Patent against the Judgment passed by the Hon'ble Mr. Justice D. S. Tewatia on 29th July, 1970 in Civil Writ No. 3245 of 1969.

N. C. JAIN, ADVOCATE, for the appellant.

A. L. BAHL, B. S. MALIK AND H. L. SARIN, SENIOR ADVOCATE, for the respondents.

JUDGMENT

MAHAJAN, J.—(1) This order will dispose of Letters Patent Appeals Nos. 224 to 228, and 584 and 585 of 1970. The parties in these appeals are different but the facts relevant for the decision of these appeals are the same.

(2) The appellants are tenants. They were inducted on the land after the coming into force of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Act No. 13 of 1955). The landlords prayed for their eviction on the basis of section 8 of the Act. Ultimately, an order was passed by the Financial Commissioner whereby he rejected the applications of the landlords for eviction of the tenants. The landlords then filed petitions in this Court under Articles 226 and 227 of the Constitution of India. These petitions have been allowed by a learned Single Judge of this Court basing himself on the decision in *Ranchir Singh and others v. Financial Commissioner and others* (1). That is how the tenants have come up in letters patent appeals to this Court.

(3) The sole contention that has been advanced by the learned counsel for the appellants is that if the provisions of sections 7, 7-A and 8 of the Act are read together, it will be obvious that additional protection was granted to the tenants inducted after the coming into force of the Act and they occupied a better position than the tenants who were inducted before the Act. In our opinion, this contention is wholly unfounded and cannot succeed.

(4) Before proceeding to deal with the above contention, it will be profitable straightaway to refer to section 32-E of the Act which is in these terms:—

“32-E. Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, and subject to the provisions of Chapter IV, after the date on which the final statement in respect of a landowner or tenant is published in the Official Gazette, then—

- (a) in the case of the surplus area of a landowner, or in the case of the surplus area of a tenant which is not included within the permissible limit of the landowner

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such area shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of all persons in such land shall be extinguished, and such rights, title and interest shall vest in the State Government free from encumbrances created by any person ; and

- (b) in the case of the surplus area of a tenant which is included within the permissible limits of the landowner, the right and interest of the tenant in such area shall stand terminated :

Provided that, for the purposes of clause (a), where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government."

(5) According to this provision, all surplus land, that is, land beyond the permissible limits, vested in the State Government and the landowners lost all interest therein and they were only left with the permissible area. In some cases, there were tenants on the permissible area and in order to get rid of those tenants, section 7-A was enacted. The object was that if any landowner wanted to cultivate his land personally he could do so. The only embargo was that certain tenants who fell within sub-sections (2) and (3) of section 7-A could only be disturbed up to a limited extent. If a reference is now made to section 8 in conjunction with section 7, the whole position will become clear. For that purpose, both sections 7 and 8 are reproduced below :—

"7. (1) No tenancy shall be terminated except in accordance with the provisions of this Act or except of any of the following grounds, namely :—

(a) * * *

(b) that the tenant has failed to pay rent within a period of six months after it falls due :

Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejection and he had failed to pay such arrears during that period ;

- (c) that the tenant, not being a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity has after commencement of the President's Act sublet without the consent in writing of the landowner, the land comprising his tenancy or any part thereof ;
- (d) that the tenant has, without sufficient cause, failed to cultivate personally such land in the manner and to the extent customary in the locality in which such land is situated;
- (e) that the tenant has used such land or any part thereof in a manner which is likely to render the land unfit for the purpose for which it was leased to him ;
- (f) that the tenant, on demand in writing by the landowner, has refused to execute a *kabuliyat* agreeing to pay rent in respect of his tenancy in accordance with the provisions of sections 9 and 10.

8. Subject to the provisions of section 7, every tenant admitted after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, shall hold land for a minimum term of three years :

Provided that nothing herein shall apply to the tenant of a person who is a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union, or a person incapable of cultivating land by reason of physical or mental infirmity."

(6) Section 8 is made subject to section 7 and the reason is obvious, for section 8 provides a fixed period of three years for a

tenant who is inducted after the coming into force of the Act, but that period of three years is made subject to the conditions set out in section 7, that is, if a tenant breaches any of these conditions he can be evicted within the period of three years. This the learned counsel for the appellants admitted. His contention is that the tenants inducted after the Act stand on a better footing and they have to be treated at par with the tenants before the Act and can only be evicted if the conditions of section 7 are satisfied irrespective of the fact that the period of three years provided in section 8 has expired. It is here that one has to refer back to section 32-E. The object of enacting section 8 seems to be that it permits a landowner holding permissible area to induct a tenant and not to be deterred by the provisions of the Act and not take a tenant to help him in cultivation of his permissible area. Otherwise no landowner would induct a tenant and the land may remain fallow. To put the land to maximum use this provision has been enacted. One can visualise of a case where a landowner with permissible area has become very old and cannot till his own land, or a landowner is incapacitated and has a minor child who cannot till the land and he wants the land back for his child when he grows up and if the interpretation which the learned counsel for the appellants wants us to place on this provision is accepted, the landowner cannot get his permissible area for his own child when he is able to handle it. If these considerations are kept in view it will be obvious that the interpretation placed by Mr. Justice Jain in *Randhir Singh's case* (1) on section 8 is the correct interpretation. This is what Jain J. said:—

“By providing section 8, a landowner can safely lease out land even out of his reserved area for a short period while a tenant is also given security that the period would not be less than three years. In this view of the matter, I hold that section 8 provides an independent ground of eviction and a tenant inducted after the enforcement of the Amendment Act can be ejected after the expiry of three years without proving any of the conditions specified in section 7 of the Act.”

We entirely agree with the observations quoted above.

(7) Mr. Jain, learned counsel for the appellants, laid great stress on the language of section 7-A for his argument that section 8 does not talk of section 7-A whereas it talks of section 7 only, and,

therefore, he contended that section 8 gives additional security to a tenant inducted after the Act. This argument is again fallacious. Section 7-A has been enacted to meet a totally different situation, and that is the reason why no mention is made of this provision in section 8. The only object of section 8 was to fix a minimum period for which a tenant if inducted by a landowner with a permissible area after the Act could hold on the land. It does nothing more than that, and that is why only section 8 was made subject to section 7 because if a tenant breached any of the provisions of section 7 he could be evicted, even within the period fixed by section 8.

For the reasons recorded above, we see no force in any of these appeals and the same are dismissed. There will be no order as to costs.

GOPAL SINGH, J.—I agree.

B.S.G.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

DYAL KAUR,—*Petitioner*

versus

UJAGAR SINGH, ETC.,—*Respondents.*

Civil Revision No. 535 of 1970

January 6, 1971.

Code of Civil Procedure (V of 1908)—Order 33, rules 1 and 9—Maintenance allowance of a person—Whether can be taken into consideration for finding whether he or she is able to pay the prescribed Court-fee for a suit—Receipt of arrears of maintenance by a pauper plaintiff—Whether sufficient to dispauper him.

Held, that maintenance allowance of a person cannot be taken into consideration for finding out whether he or she is possessed of sufficient means to enable him or her to pay the fee prescribed by law for the plaint in a pauper suit and for determining whether he or she is a pauper within the meaning of order 33, rule 1 of the Code of Civil Procedure. Maintenance allowance is primarily for day-to-day expenses. It cannot be utilized for